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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

GWENDOLYN KASEBURG,

Respondent,

v.

JEFFREY KASEBURG,

Appellant.

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RESPONDENT'S BRIEF

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## I. INTRODUCTION

When the police seized \$20,000 from Appellant Jeffrey Kaseburg's ("Mr. Kaseburg's") residence in a drug raid on April 29, 2011, he told the police he was hiding the money from his ex-wife. Mr. Kaseburg's dissolution trial with Respondent Gwendolyn Kaseburg (now Gwendolyn Bowman, and hereinafter referred to as "Ms. Bowman") had just concluded the day before. As soon as Ms. Bowman learned about the seizure and Mr. Kaseburg's statement, she moved the trial court to award her the \$20,000 as part of the property distribution. At Mr. Kaseburg's request, the trial court deferred ruling on this issue until after it entered the Decree of Dissolution ("the Decree"). Subsequently it awarded the funds to Ms. Bowman.

In this appeal, Mr. Kaseburg now argues that the trial court lacked jurisdiction to distribute the \$20,000 after it entered the Decree. In the alternative, Mr. Kaseburg argues that the trial court abused its discretion by awarding those funds to Ms. Bowman. Both arguments are incorrect. Under both RCW 26.09.080 and governing Washington case law, the trial court properly deferred its consideration of those funds until it became clear that they were not subject to forfeiture. Moreover, in view of substantial evidence that Mr. Kaseburg had been concealing the funds from Ms. Bowman, the trial court did not abuse its discretion in ultimately awarding them to her.

Mr. Kaseburg also argues that the trial court lacked jurisdiction to issue a post-Decree order regarding an IRS lien for payroll taxes. Here,

too, Mr. Kaseburg's arguments are mistaken. The lien concerns Mad Dogs Family Diner and GEF Enterprises, LLC. The Decree awarded the Mad Dogs business to Mr. Kaseburg. Substantial evidence in the record shows that Mr. Kaseburg was in control of Mad Dog's throughout the relevant period, regardless of the name of the entity through which the business was run. He also led the court to believe that the restaurant had no past-due taxes. Hence, when it became plain after the Decree was issued that there was in fact a tax debt, and that an IRS lien had attached to property awarded to Ms. Bowman, the trial court properly clarified that Mr. Kaseburg's ownership of the business carried with it responsibility for its tax debts.

For these and other reasons spelled out in detail below, the trial court did not lack jurisdiction to issue the orders on appeal, nor did it abuse its discretion in entering them. Similarly, the trial court did not abuse its discretion in denying Mr. Kaseburg's Motion for Reconsideration. This Court should affirm the trial court in all respects, and deny Mr. Kaseburg's request for fees.

## **II. RESPONDENT'S RESTATEMENT OF THE CASE**

Before getting married on August 18, 2000, Mr. Kaseburg and Ms. Bowman had lived together for approximately seven years.<sup>1</sup> Shortly

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<sup>1</sup> See Findings of Fact and Conclusions of Law ("FOF/COL"), at p. 4 lines 10-15. Because the FOF/COL were not listed in Mr. Kaseburg's Designation of Clerk's Papers, a copy is attached to this Brief as Appendix A. As with the other documents attached to this Brief in the appendices, it

before the wedding, Mr. Kaseburg presented Ms. Bowman with a proposed pre-nuptial agreement.<sup>2</sup> The pre-nuptial agreement included an attached "Exhibit A" which purported to represent "the separate assets and liabilities of [Jeffrey] Kaseburg."<sup>3</sup> Among the assets and liabilities listed as belonging solely to Mr. Kaseburg is "Mad Dogs Café and 85% of its net assets." On the other hand, Exhibit B to the pre-nuptial agreement, purporting to list the "separate assets and liabilities of Bowman," makes no reference to "Mad Dogs Café" or any other business interest.<sup>4</sup> The pre-nuptial agreement also "fail[ed] to disclose any of the approximately \$692,000 in promissory notes [Mr. Kaseburg] owed his parents."<sup>5</sup>

Both before and after the wedding, "[t]he wife managed the parties' restaurant business twelve hours a day while the husband built" two homes.<sup>6</sup> However, there is conflicting evidence in the record regarding who handled the restaurant's books and who was responsible for

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is also listed in Respondent's Supplemental Designation of Clerk's Papers, as per RAP 9.6(a).

<sup>2</sup>A copy of the pre-nuptial agreement was attached to Mr. Kaseburg's Response to Petition (Marriage), a copy of which is in turn attached to this Brief as Appendix B. *See also* FOF/COL at p. 2, lines 20-21 (finding that "[a]t the most the wife had 8 days to review the Prenuptial Agreement"), attached to this Brief as Appendix A.

<sup>3</sup> Response to Petition (emphasis added), attached to this Brief as Appendix B.

<sup>4</sup> Response to Petition, attached hereto as Appendix B.

<sup>5</sup> FOF/COL, at p. 2, lines 16-17, attached to this Brief as Appendix A.

<sup>6</sup> FOF/COL at p. 4, lines 16-17, attached to this Brief as Appendix A. Compare Appellants' Brief at p. 9, citing to CP 134 and asserting that "the lower Court found that Gwendolyn Kaseburg managed the parties restaurant business twenty-four hours a day" (emphasis added).

payroll taxes during the years 2003 to 2005. Compare CP 84 (Mr. Kaseburg's declaration, asserting that Ms. Bowman "was the only one who handled the money for the project" at this time) with CP 148-49 (Ms. Bowman's declaration, asserting that "I did not file the 941 taxes. I did not file any quarterly reports. It is Mr. Kaseburg who filed the 941 tax returns . . . . 941 taxes, quarterly reports, [and] employee tax reporting . . . . w[ere] Mr. Kaseburg's sole responsibility").

There is similarly conflicting evidence regarding who owned and controlled the restaurant business, particularly during 2003 through 2005. The parties' 1040 tax return forms for these years show "Jeffrey Kaseburg" listed as the "proprietor" of the Mad Dog Family Diner on the first line of the respective Schedule Cs.<sup>7</sup> On or about June 14, 2004, Mr. Kaseburg wrote to the Washington State Liquor Control Board as follows:

In reference to your letter dated June 10<sup>th</sup> 2004, I Jeff Kaseburg being the only person of interest of the old Mad Dog's Café Inc. do hereby assign all the business property to GEF Enterprises LLC.<sup>8</sup>

Then, approximately a year and a half later, Mr. Kaseburg again addressed the Liquor Control Board:

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<sup>7</sup> See Trial Exhibits 10, 11, and 12. Because these trial exhibits are "financial source documents" pursuant to GR 22(b)(8), only redacted excerpts are attached to this Brief as Appendices C, D, and E. However, these exhibits are also designated in Respondent's Supplemental Designation of Clerk's Papers.

<sup>8</sup> Trial Exhibit 18, excerpts of which are attached to this Brief as Appendix F.

By way of introduction my name is Jeff Kaseburg. I own Mad Dog's Family Diner (G.E.F. Enterprises, L.L.C.) Of which I closed. I have a new company called Doggie Style Enterprises, L.L.C. Which is D.B.A. As the Mad Dogs Diner and Pub. I here-by assign all the business assets from GEF Enterprises to Doggie Style Enterprises L.L.C.<sup>9</sup>

Moreover, on April 21, 2011, Mr. Kaseburg—acting through counsel—confirmed his claim to exclusive ownership and control of the restaurant, which he referred to as “his business” which he said he had owned since “prior to the parties’ marriage.”<sup>10</sup> He further asserted that “there is nothing to establish that Mr. Kaseburg ever intended to change the character . . . of his business from separate property to community property.”<sup>11</sup>

On the other hand, Mr. Kaseburg has also asserted that during some period between late 2003 and late 2005, the restaurant business was run by G.E.F. Enterprises, LLC, and that the latter was exclusively controlled by Ms. Bowman. CP 83-84. According to this version of Mr. Kaseburg’s story, “G.E.F.” stood for “Gwen’s Entrepreneurial Future.” CP 83. Ms. Bowman, by contrast, has maintained that Mr. Kaseburg “is lying . . . with regard to my owning G.E.F. Enterprises,” pointing out that there are neither purchase documents for the supposed transfer of the

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<sup>9</sup> Trial Exhibit 18, attached to this Brief as Appendix F.

<sup>10</sup> Respondent’s [Mr. Kaseburg’s] Trial Memorandum, at p. 3, line 16 and p. 5, line 14, attached to this Brief as Appendix G.

<sup>11</sup> *Id.* at p. 9, lines 2-5, attached to this Brief as Appendix G. See also Declaration of Jeffrey Kaseburg, filed November 23, 2009, at p. 5:23-24 (asserting that “[t]hroughout our marriage I have abided by the terms of our prenuptial agreement and have kept my separate property separate”), attached this Brief as Appendix H.

business to Gwen, nor “sale documents when it was purportedly turned back to his ownership.” CP 191-92.

Mr. Kaseburg and Ms. Bowman separated on or about October 18, 2008.<sup>12</sup> Ms. Bowman filed a petition for dissolution on April 27, 2009, to which Mr. Kaseburg responded on May 21, 2009. In his response to the petition, Mr. Kaseburg “admitted that there are debts and liabilities of the parties,” but “denied . . . that the court should make a division of the debts and liabilities as there is a pre-nuptial agreement signed by the parties which dictates the division of the debts and liabilities.”<sup>13</sup> Consistent with this position, Mr. Kaseburg admitted that “I have excluded Gwen from my [restaurant] business and my business records as they are my separate property and she is not entitled to access.”<sup>14</sup>

Trial occurred between April 21 and April 28, 2011.<sup>15</sup> The issue of the validity of the pre-nuptial agreement, which described the restaurant business as Mr. Kaseburg’s separate property, remained contested through trial.<sup>16</sup> The trial court was also presented with the issue of possible significant outstanding liabilities to the IRS for unpaid payroll taxes at Mad Dogs Family Diner and GEF Enterprises, LLC.<sup>17</sup> Mr. Kaseburg,

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<sup>12</sup> FOF/COL at p. 2, line 7, attached to this Brief as Appendix A.

<sup>13</sup> See Response to Petition (Marriage) at p. 2, ¶ 1.9, attached to this Brief as Appendix B.

<sup>14</sup> See Declaration of Jeffrey Kaseburg, filed June 1, 2009, at p. 3, excerpts of which are attached to this Brief as Appendix I.

<sup>15</sup> FOF/COL at p. 1, attached to this Brief as Appendix A.

<sup>16</sup> Id. at p. 2.

<sup>17</sup> See Trial Exhibit 85, a redacted copy of the first page of which is attached to this Brief as Appendix J; and Trial Exhibit 14 (last two pages),

however, testified that “all 941 taxes were paid.” CP 85.<sup>18</sup> See also CP 189-91.

On April 28, 2011 the trial court issued a Memorandum Decision which found the pre-nuptial agreement to be invalid.<sup>19</sup> The trial court also determined that “the husband should be awarded the restaurant business and the wife should be awarded the . . . home and property subject to the mortgage.”<sup>20</sup> The Memorandum Decision concluded by requesting Ms. Bowman’s counsel to prepare appropriate findings of fact, conclusions of law, and a decree of dissolution for presentation to the court.<sup>21</sup>

The very next day, the Pierce County Sherriff’s Department conducted a drug raid on Mr. Kaseburg’s residence. CP 71. During the course of the raid, officers found \$20,000 in a safe in the residence, funds which Mr. Kaseburg “claimed he is hiding from his ex-wife.” CP 71. Less than a week later, Ms. Bowman filed her Post Trial Motion, seeking release to her of the \$20,000.<sup>22</sup> In her supporting declaration, Ms. Bowman reminded the trial court that Mr. Kaseburg had repeatedly

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a redacted copy of the last two pages of which is attached to this Brief as Appendix K. The Exhibit Record for the trial is attached to this Brief as Appendix L.

<sup>18</sup> As briefly discussed below in Section IV(A), Mr. Kaseburg did not request transcription of any of the trial testimony. However, Mr. Kaseburg reaffirmed this precise testimony in his Declaration dated December 12, 2011. CP 85.

<sup>19</sup> Memorandum Decision, at p. 1, lines 14-20, attached to this Brief as Appendix M.

<sup>20</sup> Id. at p. 2, attached to this Brief as Appendix M.

<sup>21</sup> Id.

<sup>22</sup> See Post Trial Motion, attached to this Brief as Appendix N.

claimed he had no money. CP 68-69.<sup>23</sup> Mr. Kaseburg, through counsel, objected to Ms. Bowman's motion, effectively arguing that the trial court had no jurisdiction over the seized funds until after a criminal court had ruled on forfeiture issues.<sup>24</sup> At oral argument on the motion, which coincided with the hearing on the presentment of the Decree, counsel for Mr. Kaseburg concurred that it was "the right thing to do" to "wait and decide this [issue] based on what happens with the criminal case." RP (5/20/2011) at p. 27:18-22. The trial court then proceeded to reserve its ruling on the issue of the \$20,000. RP (5/20/2011) at p. 28:7 to p. 29:9. It subsequently entered the Decree on June 3, 2011. CP 62.

The Decree awarded Ms. Bowman the "Burnett" home, subject to a Columbia Bank mortgage, which was to be refinanced as soon as possible. CP 66-67. When Ms. Bowman attempted to procure refinancing, she learned that an IRS lien on Mad Dogs Family Diner and GEF Enterprises had attached to the Burnett home. CP 56, 60. Asserting that "Mr. Kaseburg testified at trial that there were no taxes owed on this property on [sic] that all matters regarding 941 taxes had been cleared," Ms. Bowman requested that the trial court clarify the Decree to indicate

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<sup>23</sup> See also Respondent's [Mr. Kaseburg's] Financial Declaration, filed April 21, 2011, a copy of which is attached to this Brief as Appendix O. In this Declaration, Mr. Kaseburg affirmed that he had zero cash on hand, and no liquid assets. Appendix O at p. 3.

<sup>24</sup> Declaration of Stephen W. Fisher in Response to Petitioner's Post-Trial Motion and Re: Presentation of Final Pleadings ("First Fisher Decl."), a copy of the first four pages of which is attached to this Brief as Appendix P.

“that Mr. Kaseburg is responsible for any and all taxes including employee 941 taxes . . . on the business known as Mad Dogs Restaurant.” CP 56, 74. At the same time, Ms. Bowman renewed her request that the trial court award her the \$20,000 which Mr. Kaseburg had said he was hiding from her. CP 74.

After considering a lengthy responsive declaration filed by Mr. Kaseburg (CP 76-134), the trial court issued an initial Order Regarding Post Trial Motion on December 16, 2011. CP 135. This Order required the Pierce County Sherriff’s Department to deposit the \$20,000 with the clerk of the court, and reserved the clarification issue concerning the lien. CP 136. Then, after considering additional declarations from both parties, on February 10, 2012, the trial court issued its Amended/Clarification of the Decree of Dissolution, clarifying that Mr. Kaseburg “is fully responsible for any and all debt associated with the business known as Mad Dogs Diner” and awarding Ms. Bowman the \$20,000. CP 154. After a motion for reconsideration (CP 155-56) was denied (CP 203), this appeal followed. CP 204-205.

### **III. SUMMARY OF THE ARGUMENT**

The trial court addressed two different issues in its post-Decree orders, and properly resolved each of those issues under distinct principles of law. Regarding the \$20,000 seized from Mr. Kaseburg’s home, the trial court reserved its ruling before issuing the Decree. It did so at Mr. Kaseburg’s request, and at a time when it had no jurisdiction over the funds. This decision, and its subsequent order awarding those funds to

Ms. Bowman, were thus proper under RCW 26.09.080 and *Little v. Little*, 96 Wn.2d 183, 634P.2d 498 (1981).

As for the payroll tax lien on Mad Dog's Family Diner, the Decree assigned that business to Mr. Kaseburg. Likewise, the Decree assigned a residence to Ms. Bowman, subject only to a construction lien. When it became evident that an IRS lien for the restaurant's unpaid payroll taxes had attached to Ms. Bowman's residence, the trial court properly clarified that Mr. Kaseburg bore sole responsibility for the lien. Because this part of the relevant order was a clarification, and not a modification, it did not exceed the trial court's authority.

#### IV. ARGUMENT

**A. If this Court is troubled by the inadequate record on appeal, it should refuse to consider the issues raised by Mr. Kaseburg.**

The record on review here is quite limited. Mr. Kaseburg did not request transcription of any of the trial testimony in this matter, nor did he designate any of the trial exhibits in his Designation of Clerks Papers. CP 217-19. With this Brief, Ms. Bowman is also filing Respondent's Supplemental Designation of Clerk's Papers, and by so doing believes she has adequately enhanced the documentary record. However, there appear to be a number of points where the issues raised by Mr. Kaseburg could depend on the content of the missing trial transcripts. "A party seeking review has the burden of perfecting the record so that the court has before

it all evidence relevant to the issue on appeal.”<sup>25</sup> Should this Court determine that the record is not adequate to support review of any of the issues raised by Mr. Kaseburg, it should refuse to consider those issues.

### **B. The relevant standards of review**

Two different standards of review apply to the issues on appeal in this case. First, the question of whether the trial court had jurisdiction to enter a post-Decree order regarding the \$20,000 in seized funds is a pure question of law, and is subject to *de-novo* review.<sup>26</sup> Assuming that the court did have jurisdiction, however, the question of whether it properly awarded those funds to Ms. Bowman is reviewed for abuse of discretion.<sup>27</sup>

As for the whether the trial court properly clarified the Decree by making Mr. Kaseburg responsible for the IRS lien, this appears to be a pure question of law, albeit one with two levels. The Decree was only subject to clarification if it was ambiguous, and whether it was ambiguous is a question of law.<sup>28</sup> Whether the terms of the clarification correctly capture the original intent is also a question of law.<sup>29</sup> Both of these

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<sup>25</sup> *State ex rel. Dean by Mottet v. Dean*, 56 Wn. App. 377, 382, 783 P.2d 1099 (1989) (rejecting one of appellant’s arguments because of the inadequate record).

<sup>26</sup> *See, e.g., Young v. Clark*, 149 Wn.2d 130, 132, 65 P.3d 1192 (2003).

<sup>27</sup> *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992) (holding that an order distributing property is reviewed for abuse of discretion).

<sup>28</sup> *See, e.g., Chavez v. Chavez*, 80 Wn. App. 432, 435, 909 P.2d 314, review denied, 129 Wash.2d 1016, 917 P.2d 576 (1996) (noting that the interpretation of a dissolution decree is a question of law).

<sup>29</sup> *See Gimlett v. Gimlett*, 95 Wn.2d 699, 704-05, 629 P.2d 450 (1981) (holding that ascertaining the original intent of a decree is “not a question of fact, but is a question of law”).

aspects of the trial court's decision on the IRS lien are thus reviewed *de novo*.

Finally, Mr. Kaseburg also assigns error to the trial court's denial of his Motion for Reconsideration.<sup>30</sup> CP 203. Denial of a motion for reconsideration is reviewed for abuse of discretion.<sup>31</sup>

**C. The trial court properly awarded the \$20,000 seized from Mr. Kaseburg's residence to Ms. Bowman.**

1. When the money was first seized, the trial court lacked jurisdiction to distribute it.

A Superior Court judge in a divorce proceeding has no jurisdiction over funds seized by the police while those funds are subject to pending forfeiture proceedings under either RCW § 10.105.010 (concerning property involved in a felony) or RCW § 69.50.505 (concerning property involved in a violation of the Uniform Controlled Substances Act). Both of these statutes set forth essentially identical procedures for establishing rights to seized funds. Both require forfeiture hearings, and both require that the hearing be before a law enforcement officer or administrative law judge, unless an interested party properly removes the issue to Superior Court:

The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee . . . or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to

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<sup>30</sup> See Appellant's Brief at p. 3, Assignment of Error No. 12. However, Mr. Kaseburg devotes no argument in his Brief to this alleged error.

<sup>31</sup> *In re Estate of Peterson*, 102 Wn. App. 456, 462, 9 P.3d 845 (2000).

a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession.

RCW § 69.50.505(5).<sup>32</sup>

The application of the forfeiture statutes to the facts here is clear. When Ms. Bowman first moved on May 6, 2011 for an award of the \$20,000 seized by the police, those funds were potentially subject to forfeiture proceedings. CP 68-71. They remained so at the time the trial court made its ruling on Ms. Bowman's motion on May 20, 2011, as well as on the date of the Decree. CP 72-73; 62-67. As of June 3, 2011 there is no record that anyone had petitioned to remove any such forfeiture proceedings to Superior Court, let alone to the trial judge's department. Accordingly, when the trial court ruled on Ms. Bowman's initial motion, it had no jurisdiction to dispose of the \$20,000. Counsel for Mr. Kaseburg correctly apprised the trial court of its lack of jurisdiction, and asked the Court to reserve its ruling.<sup>33</sup> The trial court did so. CP 73; RP (5/20/2011) at 27.

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<sup>32</sup> RCW 10.105.010(5) contains essentially the same language.

<sup>33</sup> See First Fisher Decl., attached to this Brief as Appendix P.

2. The trial court properly reserved ruling on the \$20,000 issue until after the Decree was entered.

There are two reasons why the trial court did not err when it decided to defer its ruling on the \$20,000 issue until after the Decree was entered. First of all, RCW 26.09.080 expressly authorizes “proceeding[s] for disposition of property *following dissolution of the marriage . . .* by a court which . . . lacked jurisdiction to dispose of the property” (emphasis added). As this Court has previously held,

[b]y explicitly authorizing a trial court to conduct a second-stage proceeding dividing property where jurisdiction was lacking at the time of trial, the statute implicitly authorizes bifurcation. *When a court lacks jurisdiction to dispose of property at the time of the dissolution trial, it may dissolve the legal status of the marriage while deferring those issues over which the court does not have jurisdiction.*

*In re Marriage of Vigil*, 162 Wn. App. 242, 249, 255 P.3d 850 (2011).<sup>34</sup>

This is precisely what the trial court did in this case with regard to the \$20,000 in seized funds. Its decision to defer distribution of those funds until after entry of the Decree, and until it had acquired jurisdiction of the funds, was not error.

Second, even if the trial court actually somehow had jurisdiction over the \$20,000 at the time it entered the Decree, the fact that Mr. Kaseburg asked the Court to defer its ruling (combined with the fact that Ms. Bowman did not object) justified its decision to do so. As the State Supreme Court has held, “[a] party to a marriage dissolution has the right

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<sup>34</sup> See also *Little*, 96 Wn.2d at 192 (citing an exception to the general rule “that ancillary relief be awarded at the same time that the status decree is entered” for those situations “where the court subsequently acquires . . . jurisdiction over their property”).

to have his interest in the property of the parties definitively and finally determined in the decree which dissolves the marriage.”<sup>35</sup> However, the Supreme Court has also implicitly held that a party can waive that right by failing to timely object to a proposed deferral of a property distribution issue.<sup>36</sup> Here, Mr. Kaseburg not only did not object to the deferral, he suggested the deferral. RP (5/20/2011) at 27:18 to 28:1.<sup>37</sup> He cannot now be heard to complain that the trial court did what he asked it to do.<sup>38</sup>

For both of these reasons, there was no need in this case for “an independent action for either partition or . . . declaratory relief” with regard to the \$20,000.<sup>39</sup> Unlike *In re Marriage of Molvik*, 31 Wn. App. 133, 639 P.2d 238 (1982), this is not a matter where the trial court was not apprised of previously undisclosed assets until almost six years after the

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<sup>35</sup> *Id.* at 194.

<sup>36</sup> *Id.* at 189 (holding that courts do not have “the authority to enter a decree of dissolution, deferring resolution of ancillary questions . . . *over the objection of one of the parties*”) (emphasis added).

<sup>37</sup> See also First Fisher Decl., at p. 2, lines 4-6, attached to this Brief as Appendix P, (asserting that “[a]fter the Criminal Court has made its determination, it would be necessary to have a hearing, in the dissolution proceeding, to determine the nature of the funds.”)

<sup>38</sup> This conclusion follows not only from *Little*, 96 Wn.2d at 189, but also from the general doctrine of invited error. “Under the doctrine of invited error, counsel cannot set up an error at trial and then complain of it on appeal . . . . This court will deem an error waived if the party asserting such error materially contributed thereto.” *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995). See also *City of Seattle v. Patu*, 147 Wn.2d 717, 720, 58 P.3d 273 (2002) (noting that the doctrine applies “even in cases where the error resulted from neither negligence nor bad faith”).

<sup>39</sup> Opening Brief of Appellant at p. 16.

entry of a decree of dissolution.<sup>40</sup> Instead, the trial court here was alerted to the controversy over the \$20,000 before it issued the Decree. CP 68-71. Mr. Kaseburg asked the trial court to defer its ruling on the \$20,000 before the court issued the Decree, and the trial court did so.<sup>41</sup> CP 72-73. Moreover, because the trial court was aware of, but lacked jurisdiction over, the \$20,000 at the time it entered the Decree, the situation is governed by RCW 26.09.080 and *In re Marriage of Vigil*.<sup>42</sup> Those authorities expressly allow a trial court in such circumstances to bifurcate the proceedings, which is effectively what the trial court here did. No “independent action” was necessary.<sup>43</sup>

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<sup>40</sup> The other cases cited in Mr. Kaseburg’s Opening Brief to support the supposed need for an “independent action” are not on point. *In re Marriage of Tang*, 57 Wn. App. 648, 789 P.2d 118 (1990), involved an improperly granted motion to vacate a decree brought under CR 60(b). No such CR 60(b) motion was made (or necessary) here. *Devine v. Devine*, 42 Wn. App. 740, 711 P.2d 1034 (1985) involved the question of whether a Washington court could entertain an independent action to distribute a pension, when the Hawaii court that had dissolved the marriage had been unaware of the pension. That a Washington court *can* entertain such an action does not mean that it *must* insist on such an action in the very different circumstances here. Finally, *Yeats v. Estate of Yeats*, 90 Wn.2d 201, 580 P.2d 617 (1978) remains good law for the proposition that “[c]ommunity property not disposed of in a dissolution is owned thereafter by the former spouses as tenants in common.” However, nothing in *Yeats* requires an independent proceeding to dispose of such property in the circumstances of this case, circumstances which are expressly governed by RCW 26.09.080.

<sup>41</sup> First Fisher Decl., at p. 2, attached to this Brief as Appendix P.

<sup>42</sup> 162 Wn. App. 242 (2011).

<sup>43</sup> The “second-stage proceeding dividing property” authorized by RCW 26.09.080 is clearly not an “independent action.” *In re Marriage of Vigil*, 162 Wn. App. at 249. This is consistent with normal bifurcation procedure under CR 42. *See, e.g.*, 4 Wash. Prac., Rules Practice CR 42 (5th ed.) (noting that “[w]hen the court orders separate trials on particular claims or issues pursuant to CR 42(b), the action continues to be just one

3. The trial court did not abuse its discretion in awarding the \$20,000 to Ms. Bowman.

Ultimately, on February 10, 2012, the trial court awarded the \$20,000 to Ms. Bowman. CP 154. It did so after Mr. Kaseburg pled guilty to a misdemeanor in the drug matter, and after he informed the court that his property was not to be forfeited (thereby vesting the trial court with jurisdiction over the \$20,000).<sup>44</sup> CP 78, at lines 6-8. When it ruled, the trial court had heard three days of testimony during the dissolution proceedings.<sup>45</sup> It also took into account two distinct post-Decree declarations by Mr. Kaseburg (CP 76-134, and CP 139-45), and afforded counsel two post-Decree opportunities for oral argument. RP (12/16/2011) and RP (2/10/2012). Mr. Kaseburg has no credible complaint of lack of due process before the trial court made its decision.

Moreover, the award of the \$20,000 to Ms. Bowman had a strong, evident legal and factual basis. When a party to a dissolution proceeding conceals assets, the trial court may take that dishonesty into account when

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action, and the result is normally just one final judgment”). Moreover, the fact that a decree of dissolution is an appealable final judgment does not change the fact that there can be a valid post-decree resolution of reserved property issues in the same case. See *In re Marriage of Hermesen*, 27 Wn. App. 318, 325, 617 P.2d 462 (1980) (holding that “a decree of dissolution that reserves the right to dispose of other matters is a final judgment appealable under RAP 2.2(a)(1)”), *abrogated on other grounds by Little v. Little*, 96 Wn. 2d 183, 634 P.2d 498 (1981).

<sup>44</sup> Put slightly differently, Mr. Kaseburg has never argued that as of February 10, 2012 any forfeiture proceedings concerning the \$20,000 were still pending.

<sup>45</sup> See Memorandum of Journal Entry, attached to this Brief as Appendix Q.

distributing the marital property.<sup>46</sup> Each member of the marital community has the duty to make a full and fair disclosure of all property, both separate and community, as he or she has in their management and control. If they do not do so, they “must not be surprised if the courts take that fact into consideration in making an equitable distribution of property.”<sup>47</sup>

Here, Mr. Kaseburg told the police he was hiding the \$20,000 from his wife. CP 71.<sup>48</sup> He also submitted a financial declaration on the eve of trial stating that he had zero cash.<sup>49</sup> In light of this evidence, the trial court was clearly within its rights to conclude that the \$20,000 represented funds concealed from the court. Mr. Kaseburg’s argument that this conclusion contradicts the trial court’s previous Findings of Fact is nonsensical.<sup>50</sup> That “the husband sold the Vandermark property *in 2006* for a net of \$813,000.00 and kept most of the proceeds except for \$350,000 which he paid to buy the Burnett land” does not at all imply that Mr. Kaseburg must have had \$20,000 in cash five years later!<sup>51</sup> Likewise, the fact that the Decree credited Mr. Kaseburg with \$382,000 in proceeds from the 2006

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<sup>46</sup> See, e.g., *In re Marriage of Nicholson*, 17 Wn. App. 110, 118-19, 561 P.2d 1116 (1977).

<sup>47</sup> *Rentel v. Rentel*, 39 Wn. 2d 729, 736, 238 P.2d 389, 393 (1951).

<sup>48</sup> Because the statement is an admission by a party opponent under ER 801(d)(2), it is not hearsay.

<sup>49</sup> See p. 3 of the Financial Declaration Mr. Kaseburg filed with the trial court on April 21, 2011, a copy of which is attached to this Brief as Appendix C.

<sup>50</sup> Compare Appellant’s Opening Brief, at pp. 18-20.

<sup>51</sup> FOF/COL at p. 5 (emphasis added), attached to this Brief as Appendix A.

sale of the Vandermark property does not mean the court believed he had that sum, or any fraction thereof, in cash at the time of trial. CP 66. Finally, there is no reason why the trial court was compelled to believe the evidence offered by Mr. Kaseburg to contradict his own statement that he was hiding the funds from Ms. Bowman. *Cf.* CP 79-81; 91-115. The trial court did not abuse its discretion by awarding the \$20,000 to Ms. Bowman.

**D. The trial court properly clarified the Decree to reflect its intent that Mr. Kaseburg be responsible for the tax debts of the Mad Dogs business.**

In addition to awarding Ms. Bowman the \$20,000 seized from Mr. Kaseburg's residence, the trial court's order dated February 10, 2012 also made Mr. Kaseburg "fully responsible for any and all debt associated with the business known as Mad Dogs Diner and any of the Limited Liability Corporations, especially GEF Enterprises, LLC under which it has operated." CP 154. Mr. Kaseburg now argues that this was an impermissible "modification" of the Decree.

1. The trial court's decision regarding the IRS lien was a clarification, not a modification, of the Decree.

"A trial court does not have the authority to modify . . . its own decree in the absence of conditions justifying the reopening of the judgment."<sup>52</sup> However, "[a]n ambiguous decree may be clarified."<sup>53</sup>

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<sup>52</sup> *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999) (citing to RCW 26.09.170(1) and *Kern v. Kern*, 28 Wn.2d 617, 619, 183 P.2d 811 (1947)).

<sup>53</sup> *Id.*

Moreover, “[u]nlike a modification, amendment, or alteration, which must be accomplished under CR 59, CR 60 or some other exception to preclusion, a ‘clarification’ can be accomplished at any time.”<sup>54</sup> The propriety of the trial court’s action on this issue, therefore, depends in the first instance on whether its original Decree was ambiguous with regard to the assignment of responsibility for the IRS lien, and hence potentially subject to clarification.

To qualify as “ambiguous,” the Decree must be “fairly susceptible to two different, reasonable interpretations.”<sup>55</sup> It is. On the one hand, the Decree assigns Mad Dogs Restaurant as an asset to Mr. Kaseburg. CP 66. From the assignment of the restaurant as an asset to Mr. Kaseburg, it is reasonable to infer that Mr. Kaseburg was also to be responsible for all debts associated with the restaurant, including unpaid payroll taxes due, if any. On the other hand, since the Decree specifically mentions certain debts associated with the restaurant (and assigns them to Mr. Kaseburg), but does not mention any unpaid taxes, it is also reasonable to infer that the Decree embodies no intention regarding that debt. CP 67. The Decree is susceptible to two different reasonable interpretations, and hence is ambiguous.

Since the Decree is ambiguous, Ms. Bowman properly asked the trial court to clarify its meaning with regard to back taxes and the resulting

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<sup>54</sup> *Kemmer v. Keiski*, 116 Wn.App. 924, 933-34, 68 P.3d 1138 (2003).

<sup>55</sup> *Wm. Dickson Co. v. Pierce County*, 128 Wn. App. 488, 493-94, 116 P.3d 409 (2005)

IRS lien. CP 74. In response, the trial court effectively “defin[ed the] rights already given, spelling them out more completely” as necessary.<sup>56</sup> It did so by clarifying that Mr. Kaseburg’s ownership of the restaurant reasonably and naturally also entailed responsibility for the restaurant’s debts:

Respondent, Jeffrey Kaseburg, is fully responsible for any and all debt associated with the business known as Mad Dogs Diner and any of the Limited Liability Corporations, especially GEF Enterprises, LLC under which it has operated, including all IRS debts, and 941 Employee Taxes from the inception of the business through the entry of the Decree of Dissolution

CP 154.

2. The trial court’s clarification of the Decree accurately reflected its original intent.

In interpreting the Decree for the purpose of clarifying it, the trial court had a duty ascertain its original “intention using the general rules of construction applicable to statutes and contracts.”<sup>57</sup> At least since *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222, 228 (1990), the general rules of contract interpretation in Washington have included “the context rule”:

Determination of the intent of the contracting parties is to be accomplished by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.

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<sup>56</sup> *In re Marriage of Thompson*, 97 Wn. App. at 878 (citing to *Rivard*, 75 Wn.2d at 418).

<sup>57</sup> *In re Marriage of Thompson*, 97 Wn. App. at 878 (discussing the task of a reviewing court in interpreting an ambiguous decree; however, the task of a clarifying trial court is presumably the same).

Id. at 667.<sup>58</sup> If, after *Berg*, the requirement to ascertain the original intent of a decree using “general rules of construction applicable to statutes and contracts” incorporates the “context rule,” then it is proper to look at the entire record on review when deciding if the trial court properly clarified the Decree.

The record on review establishes two critical facts. First, until the post-trial motion practice, Mr. Kaseburg maintained that he was the sole (or at the very least principle) owner of the Mad Dog’s business. He defended the Prenuptial Agreement that purported to award him “Mad Dog Café and 85% of its net assets.”<sup>59</sup> In 2006, he wrote to the Washington State Liquor Control Board as follows:

By way of introduction my name is Jeff Kaseburg. I own Mad Dog’s Family Diner (G.E.F. Enterprises, L.L.C.) Of which I closed. I have a new company called Doggie Style Enterprises, L.L.C. Which is D.B.A. As the Mad Dogs Diner and Pub. I here-by assign all the business assets from GEF Enterprises to Doggie Style Enterprises L.L.C.<sup>60</sup>

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<sup>58</sup> An older but not expressly discredited case holds that “[n]ormally the court is limited to examining *the provisions of the decree* to resolve issues concerning its intended effect.” *Gimlett v. Gimlett*, 95 Wn.2d 699, 705, 629 P.2d 450 (1981) (emphasis added). In the wake of *Berg*’s context rule, this appears to conflict with the injunction to interpret decrees using “general rules of construction applicable to statutes and contracts.”

<sup>59</sup> See Appendix B (including copy of Prenuptial Agreement).

<sup>60</sup> Trial Exhibit 18, the relevant excerpt from which is attached to this Brief as Appendix F.

Moreover, on the eve of trial his counsel asserted that “there is nothing to establish that Mr. Kaseburg ever intended to change the character . . . of his business from separate property to community property.”<sup>61</sup>

Secondly, the issue of a potential IRS payroll tax liability for the year 2005 was brought up at trial.<sup>62</sup> Indeed, Mr. Kaseburg directly affirms that “[t]he information relating to the potential tax obligation was presented to the Court at trial.” CP 142.<sup>63</sup> Mr. Kaseburg has also confirmed on the record that “I testified at trial ‘that . . . all 941 [payroll] taxes were paid.’ . . . I have paid all 941 taxes, revenue taxes and income taxes on Doggie Style Enterprises, LLC, dba Mad Dogs Diner and Pub.” CP 85. After trial, Mr. Kaseburg attempted to disclaim any control over, or responsibility for, payroll tax issues that arose during the period the restaurant was ostensibly run by G.E.F. Enterprises, L.L.C. CP 83-85. However, given the documentary evidence of Mr. Kaseburg previously consistent claim to own G.E.F. Enterprises, the court evidently discounted this new argument as a self-serving. Moreover, it was not unreasonable

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<sup>61</sup> Respondent’s Trial Memorandum, at p. 9, lines 2-5, attached to this Brief as Appendix G.

<sup>62</sup> See Trial Exhibit 85, a redacted excerpt of which is attached to this Brief as Appendix J. See also Trial Exhibit 14, a redacted excerpt of which is attached to this Brief as Appendix K.

<sup>63</sup> On this point, Mr. Kaseburg’s Declaration of February 8, 2012 directly contradicts his attorney’s declaration dated February 17, 2012, as this latter document states “[t]he Internal Revenue Service obligation was not addressed during the trial, and is an undisclosed debt of Gwendolyn Kaseburg.” CP 158.

for the trial court to take Mr. Kaseburg's assertion that "all 941 taxes were paid" as an assertion that there were no taxes due, period.

The terms of the Decree, as written, are thus consistent with an original intent on the part of the trial court to make Mr. Kaseburg responsible for all debts of the restaurant business.<sup>64</sup> The original decree did not expressly mention any tax debts, because the trial court took Mr. Kaseburg at his word that there were no such debts. Once it became clear, after the Decree was entered, that there was in fact a tax debt and a related lien, the trial court did not err when it clarified the Decree to make it plain that Mr. Kaseburg was solely responsible for the debt and the lien associated with the Mad Dogs restaurant.

**E. The trial court did not abuse its discretion in denying Mr. Kaseburg's Motion for Reconsideration.**

Although Mr. Kaseburg's Notice of Appeal lists the trial court's Order Denying Motion for Reconsideration, Appellant's Brief devotes no argument to this contention. CP 204.<sup>65</sup> Arguably, then, Mr. Kaseburg has abandoned his objection to the Order Denying Motion for Reconsideration.<sup>66</sup>

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<sup>64</sup> See also the Memorandum of Decision, at p. 2, lines 8-9 (concluding that "the husband should be awarded the restaurant business"), attached to this Brief as Appendix M.

<sup>65</sup> Mr. Kaseburg's Appellant's Brief assigns error to the denial of his Motion for Reconsideration (at p. 3, Assignment of Error No. 12), but the remainder of his Appellant's Brief makes no argument about this claimed error.

<sup>66</sup> See, e.g., *Valley View Indus. Park v. City of Redmond*, 107 Wn. 2d 621, 630, 733 P.2d 182, 188 (1987) (holding that "[a] party abandons assignments of error to *findings of fact* if it fails to argue them in its brief") (emphasis added). At least in so far as Mr. Kaseburg's objection to the

In any event, the trial court did not abuse its discretion by denying Mr. Kaseburg's Motion for Reconsideration.<sup>67</sup> For the reasons set forth above, the trial court did not lack jurisdiction to enter the Amended/Clarification of the Decree of Dissolution (CP 154). Nor did it otherwise err as a matter of law in awarding the \$20,000 to Ms. Bowman and clarifying that Mr. Kaseburg was responsible for all tax liens on the restaurant business. Finally, Mr. Kaseburg has never advanced any reason why the "new evidence" attached to his Declaration in support of the Motion for Reconsideration (CP 165-71), and the entire Declaration of Curtis Stebbins (CP 175-86) "could not with reasonable diligence have [been] discovered and produced" prior to the trial court's Order dated February 10, 2012 (CP 154).<sup>68</sup> For all of these reasons, this Court should affirm the trial court's Order Denying Respondent's Motion for Clarification. CP 209.

**F. Mr. Kaseburg is not entitled to attorney's fees for this appeal.**

Mr. Kaseburg also makes a perfunctory argument for an award of fees on appeal under RCW 26.09.140.<sup>69</sup> "Upon a request for fees and costs under RCW 26.09.140, courts will consider 'the parties' relative

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trial court's denial of his Motion for Reconsideration rests on factual matters, this Court should consider this objection abandoned.

<sup>67</sup> A trial court's denial of a motion for reconsideration is reviewed for abuse of discretion. *In re Estate of Peterson*, 102 Wn. App. at 462.

<sup>68</sup> See CR 59(a)(4). See also *Lewis v. Cullins*, 2 Wn. App. 230, 232, 470 P.2d 212 (1970).

<sup>69</sup> Appellant's Brief, pp. 25-26.

ability to pay’ and ‘the arguable merit of the issues raised on appeal.’”<sup>70</sup>  
Pursuant to RAP 18.1(c) and (e), it is premature for Ms. Bowman to object to Mr. Kaseburg’s purported financial need, or to specify her own financial circumstances. She reserves the right to answer any affidavit of financial need that may be timely filed on behalf of Mr. Kaseburg.

It is not premature for Ms. Bowman, however, to point out that the factor regarding the “arguable merit of the issues raised on appeal” does not weigh in Mr. Kaseburg’s favor. For the reasons set forth above in Sections A through E, the trial did not err in ruling for Ms. Bowman. To the extent Mr. Kaseburg may be asserting a claim for fees under RAP 18.9(a), based on the assertion that Ms. Bowman “improperly filed a Motion to Clarify the Decree of Dissolution, when an independent action was mandated,” his claim lacks any support.<sup>71</sup> Ms. Bowman is the respondent in this appeal, and is in the position of defending the trial court’s orders. Mr. Kaseburg has cited no authority for the facially nonsensical proposition that a respondent could properly be sanctioned for “fil[ing] a frivolous appeal.”<sup>72</sup> Mr. Kaseburg is not entitled to an award of fees under either RCW 26.09.140 or RAP 18.9(a).

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<sup>70</sup> *In re Marriage of Muhammad*, 153 Wn.2d 795, 807, 108 P.3d 779 (2005).

<sup>71</sup> Appellant’s Brief, at p. 26.

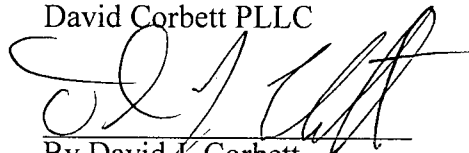
<sup>72</sup> RAP 18.9(a). *See also Stiles v. Kearney*, 168 Wn. App. 250, 267, 277 P.3d 9, review denied, 175 Wn.2d 1016, 287 P.3d 11 (2012) (noting that an appeal is frivolous if it “is so lacking in merit that there is no possibility of reversal”). Both RAP 18.9 and the relevant case law strongly suggest that it cannot be “frivolous” to respond to an appeal.

## V. CONCLUSION

Because Mr. Kaseburg asked the trial court to defer its ruling on the \$20,000 seized in the drug raid, and because the trial court initially lacked jurisdiction over those funds, the trial court did not err when it reserved ruling on those funds until after it entered the Decree of Dissolution in this matter. Furthermore, because there was substantial evidence supporting the conclusion that Mr. Kaseburg had been concealing those funds from Ms. Bowman and the court, the trial court did not abuse its discretion by awarding those funds to her. In addition, in view of Mr. Kaseburg's repeated assertions that the restaurant business was his exclusive, separate property, and his admitted testimony that all payroll taxes had been paid, the trial court properly clarified that the award of the restaurant business to Mr. Kaseburg carried with it responsibility for the IRS payroll tax lien. This Court should affirm the trial court, and deny Mr. Kaseburg's request for fees.

Respectfully submitted this 18<sup>th</sup> day of January, 2013

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STATE OF WASHINGTON

BY   
DEPUTY

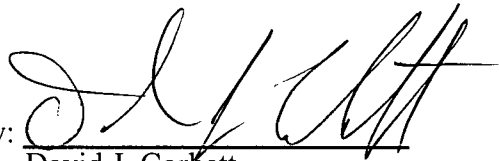
### CERTIFICATE OF SERVICE

I certify that on January 18, 2013 I sent a copy of the attached Respondent's Brief, with appendices, via United States Mail, first class postage pre-paid, to counsel for Appellant, at the following address:

Stephen W. Fisher  
6314 19<sup>th</sup> Street West, Suite 8  
Fircrest, Washington 98466

Dated this 18<sup>th</sup> day of January, 2013.

By:

  
David J. Corbett

FILED  
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DIVISION II

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NO. 43190-4-II

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

GWENDOLYN KASEBURG,

Respondent,

v.

JEFFREY KASEBURG,

Appellant.

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APPENDICES A to G

to

RESPONDENT'S BRIEF

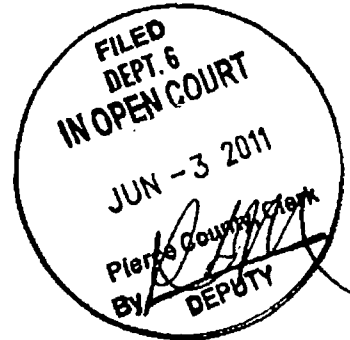
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## **APPENDIX A**



09-3-01481-6 36540511 FNFCL 06-06-11



**SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE**

**In re the Marriage of:**

**GWENDOLYN KASEBURG,**

**Petitioner,**

**And**

**JEFFREY KASEBURG,**

**Respondent**

**NO. 09-3-01481-6**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
(FNFCL)**

**I. BASIS FOR FINDINGS**

The findings are based upon trial held April 21, 25, 26, 27, and 28, 2011.  
Witnesses included Petitioner, Respondent, Roy Brewer, Roy Lee III, and Nancy Kaseburg.

**II. FINDINGS OF FACT**

Upon the basis of the court record, the court FINDS:

**2.1 RESIDENCY OF PETITIONER.**

The petitioner is a resident of the State of Washington.

**2.2 NOTICE TO THE RESPONDENT.**

The respondent appeared, responded or joined in the petition.

2.3 BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT.

The parties lived in Washington during their marriage and the petitioner continues to reside, or be a member of the armed forces stationed, in this state.

2.4 DATE AND PLACE OF MARRIAGE.

The parties were married on 8-18-00 in Seattle, King County, Washington.

2.5 STATUS OF THE PARTIES.

Husband and wife separated on 10-18-08.

2.6 STATUS OF THE MARRIAGE.

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served on the respondent joined.

2.7 SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT.

A prenuptial agreement was executed on August 18, 2000 and is incorporated herein.

The Court's decision as outlined in the Memorandum Decision dated April 28, 2011 is as follows:

- 1) The Prenuptial Agreement does not make a fair provision for the wife since she receives no interest in any assets of the husband and receives no support from him unless there is a child which is unlikely at her age.
- 2) The Prenuptial Agreement does not fully disclose assets and liabilities because it fails to disclose any of the approximately \$692,000.00 in promissory notes he owed his parents.
- 3) The Prenuptial Agreement does not contain balance sheets.
- 4) At the most the wife had 8 days to review the Prenuptial Agreement prepared by the husband's attorney and the referred to his friend who had little experience in this area of the law to advise her properly. She did not have independent advice nor full knowledge of her rights.

2.8 COMMUNITY PROPERTY.

The parties have real or personal community property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these findings.

2.9 SEPARATE PROPERTY.

The husband has real or personal separate property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these findings.

The wife has real or personal separate property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these findings.

2.10 COMMUNITY LIABILITIES.

The parties have incurred community liabilities as set forth in Exhibit B. This exhibit is attached or filed and incorporated by reference as part of these findings.

2.11 SEPARATE LIABILITIES.

See Exhibit B.

2.12 MAINTENANCE.

Does not apply.

2.13 CONTINUING RESTRAINING ORDER.

Does not apply.

2.14 PROTECTION ORDER

Does not apply.

2.15 FEES AND COSTS.

There is no award of fees or costs.

2.16 PREGNANCY.

The wife is not pregnant.

2.17 DEPENDENT CHILDREN.

Does not apply.

1 2.18 JURISDICTION OVER THE CHILDREN.

2 Does not apply.

3 2.19 PARENTING PLAN.

4 Does not apply.

5 2.20 CHILD SUPPORT.

6 Does not apply.

7 2.21 OTHER.

8 This matter was decided by a trial. That trial was April 21, 25, 26, 27, and 28, 2011.  
9 The witnesses were the petitioner, the respondent, Roy Brewer, Roy Lee III, and Nancy Kaseburg.

10 The Court concludes that the parties did in fact have a meretricious relationship  
11 for the following reasons between 1993 and the date of marriage, August 18, 2000:

- 12 a. They resided together, first in husband's condo and then on the  
13 property he bought and built a home until marriage and beyond.
- 14 b. They had an intimate sexual relationship over the seven years.
- 15 c. The wife kept contact with the husband while he was incarcerated for  
16 felony drug possession early in their relationship and provided nursing  
17 services for him when he fell and broke his arms sometime thereafter.
- 18 d. The wife managed the parties' restaurant business twelve hours a day  
19 while the husband built first the Vandermark home then the Burnett  
20 home.
- 21 e. The wife paid monthly household expenses including mortgage  
22 payments from the restaurant business.
- 23 f. The wife also worked to remodel the condo and bought furnishings for  
24 it and helped in the decorating of both homes, the condo and  
Vandermark Property.

22 The Court makes additional findings as follows:

- 23 g. The Court finds that the value of the restaurant is \$100,000.00 and  
24 the Burnett home and land with airfield is worth \$700,000.00 less  
\$387,500.00 mortgage.

- h. The Court concludes that the husband should be awarded the restaurant business.
- i. The wife should be awarded the Burnett home and property subject to the mortgage.
- j. The Court finds that the husband sold the Vandermark property in 2006 for a net of \$813,000.00 and kept most of the proceeds except for \$350,000.00 which he paid to buy the Burnett land.

### III. CONCLUSIONS OF LAW

The court makes the following conclusions of law from the foregoing findings of fact:

#### 3.1 JURISDICTION.

The court has jurisdiction to enter a decree in this matter.

#### 3.2 GRANTING OF A DECREE.

The parties should be granted a decree.

#### 3.3 Pregnancy

Does not apply.

#### 3.4 DISPOSITION.

The court should determine the marital status of the parties, consider or approve provision for the maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

#### 3.5 CONTINUING RESTRAINING ORDER.

Does not apply.

#### 3.6 PROTECTION ORDER

Does not apply.

#### 3.7 ATTORNEY'S FEES AND COSTS.

Does not apply.

1 3.8 OTHER.

2

3 Dated: June 3, 2011

4 [Signature]  
Judge/Commissioner

5 Presented by:

6 Approved for entry:

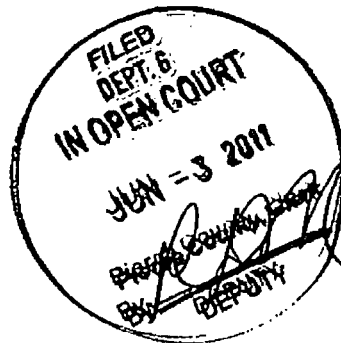
7 [Signature]  
STEVE DOWNING  
W.S.B.A. #12314  
Attorney for Petitioner

8 [Signature]  
STEPHEN W. FISHER  
W.S.B.A. # 7822  
Attorney for Respondent

9

10 [Signature]  
GWENDOLYN KASEBURG  
Petitioner

11 [Signature]  
JEFFREY KASEBURG  
Respondent



## EXHIBIT "A"

## KASEBURG

## ASSETS

## SEPARATE PROPERTY

ASSET	VALUE	HUSBAND	WIFE
6806 Old Vandermark Rd. E. Parcel	\$118,000	X	
1999 jet ski		X	
Grandma Kaseburg's Fostoria Crystal		X	
2010 Toyota Sequoia	40,000	X	
Antique furniture		SWF	
Grandfather clock			X
China cabinet			X
Side board			X
1999 3 seat jet ski			X
Equitable lien	\$37,000		X

## COMMUNITY PROPERTY

ASSET	VALUE	HUSBAND	WIFE
Mad Dogs Restaurant	\$100,000.00	X	
Proceeds from sale of Vandermark property, less raw land purchase	\$382,000.00	X	
Burnett home, 14104 282 <sup>nd</sup> Ave., E. Buckley	\$312,500.00		X
All appliances and fixtures Burnett home			X
John Deere mower, trailer	\$1,500.00	X	
John Deere tractor		X	
Glass art	\$2,500.00	X	
2006 SAAB	\$20,000.00		X
Piper Cherokee			
Cessna 210	\$15,000.00	X	

EXHIBIT "A" - ASSETS

Page 1

STEVE DOWNING  
 Attorney at Law  
 802 North 2nd St.  
 Tacoma, Washington 98403  
 (253) 572-8338

**EXHIBIT B**  
**SEPARATE DEBTS**

DEBT	AMOUNT	WIFE	HUSBAND
Jeff Haberman loan	\$16,000.00	X	
John Burkas	\$3,500.00	X	
Credit cards in wife's name		X	
Credit cards in husband's name			X
Promissory notes, loans from parents	\$636,000.00		X
2010 Toyota Sequoia	\$44,000.00		X
First bank credit card	\$12,000.00		X

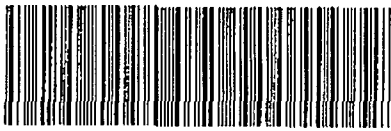
**COMMUNITY DEBTS**

DEBT	AMOUNT	WIFE	HUSBAND
Columbia bank mortgage to be refinanced as soon as possible (in approximately 90 days)	\$387,500.00	X	
Promissory notes for remodel and liquor license for Mad Dogs Diner and Pub	\$18,000.00		X
Any and all debts incurred after separation		X	X

EXHIBIT "B" - DEBTS  
Page 1

STEVE DOWNING  
Attorney at Law  
802 North 2nd St.  
Tacoma, Washington 98403  
(253) 572-8338

## **APPENDIX B**



09-3-01481-6 32112892 RSP 05-22-09

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAY 21 2009 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTYSuperior Court of Washington  
County of: PIERCE

In re the Marriage of:

GWENDOLYN KASEBURG

No. 09-3-01481-6

Petitioner,

Response to Petition  
(Marriage)  
(RSP)

and

JEFFREY KASEBURG

Respondent.

To the Above-Named Petitioner: Gwendolyn Kaseburg  
And to: Katy Banahan, her attorney

## I. Response

## 1.1 Admissions and Denials

The allegations of the petition in this matter are **Admitted** or **Denied** as follows:Paragraph of the Petition

- 1.1 Admitted
- 1.2 Admitted
- 1.3 Admitted
- 1.4 Admitted
- 1.5 Admitted

1.6	Admitted
1.7	Admitted
1.8	Admitted, in part and Denied, in part
1.9	Admitted, in part and Denied, in part
1.10	Denied
1.11	Denied
1.12	Admitted
1.13	Admitted
1.14	Admitted
1.15	Admitted

Each allegation of the petition which is denied, is denied for the following reasons (List separately):

1.8 It is admitted that there is community or separate property owned by the parties. It is denied, however, that the court should make a division of all the property as there is a pre-nuptial agreement signed by the parties which dictates the division of property in the event of a dissolution of marriage.

1.9 It is admitted that there are debts and liabilities of the parties. It is denied, however, that the court should make a division of the debts and liabilities as there is a pre-nuptial agreement signed by the parties which dictates the division of debts and liabilities in the event of a dissolution of marriage.

1.10 It is denied that maintenance should be order as pursuant to the pre-nuptial agreement signed by the parties, there is no maintenance to be paid by either party.

1.11 It is denied that there should be any restraining orders placed against the husband.

## 1.2 Notice of Further Proceedings

Notice of all further proceedings in this matter should be sent to the address below.

### 1.3 Other

N/A

///

MAY-15-2009 14:06

TUELL & YOUNG P.S.

II. Request for Relief

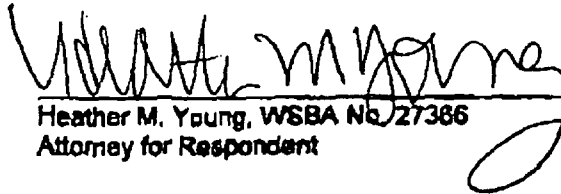
The respondent requests the Court to grant the relief requested below:

Enter a decree.

Adopt the terms of the pre-nuptial agreement as previously signed by the parties, a copy of which is attached hereto and incorporated herein by reference.

Dated:

5-20-09

  
Heather M. Young, WSBA No. 27386  
Attorney for Respondent

1457 S. Union Ave.  
Tacoma, WA 98406

I declare under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Executed at Buckley, Wa. on this 20<sup>th</sup> day of MAY, 2009.  
(City and State)

  
Jeffrey Kasaburg

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE


In Re the Marriage of:	)	
	)	No. 09-3-01481-6
GWENDOLYN KASEBURG,	)	
	)	
Petitioner,	)	
and	)	DECLARATION OF FAX
	)	SIGNATURE
JEFFREY KASEBURG,	)	
	)	
<u>Respondent.</u>	)	

I, PAM FORD, declare and state as follows:

I have has examined the Response to Petition was received in our office via facsimile, determined that it consists of 12 pages, including this Declaration and attachment, and that it is complete and legible.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing statement is true and correct.

DATED this 21st day of May, 2009 at Tacoma, WA.

  
Pam Ford

Dec of Fax Signature

**TUELL & YOUNG**  
A Professional Services Corporation  
ATTORNEYS AT LAW  
1457 SOUTH UNION AVE.  
TACOMA, WA 98405-1951  
PHONE 253-759-0070  
FAX 253-759-0310

## PRENUPTIAL AGREEMENT

Jeffrey Brock Kaseburg ["Kaseburg"] and Gwendolyn Kay Bowman ["Bowman"], in contemplation of marriage enter into the following agreement regarding the status of their property after their wedding

1. Kaseburg and Bowman affirm that they have, in negotiating this agreement, fully disclosed to the other all their respective incomes, assets, debts and liabilities and each further represent that each is satisfied that full disclosure has been made and that each enters into this agreement with full knowledge of the financial affairs of the other. Both parties have attached to this agreement a balance sheet of their assets and liabilities. Exhibit "A" represents the separate assets and liabilities of Kaseburg. Exhibit "B" represents the separate assets and liabilities of Bowman. While neither party represents that the respective balance sheet is a precise statement of assets and liabilities, it constitutes a reasonable approximation of such assets and liabilities without deduction for taxes on gains realized if the assets are sold.

2. The property rights, earnings and acquisitions of each party, from whatever source, shall be the same as if the parties were not married or cohabitating. All earnings of either party resulting from the personal efforts of a party shall be the separate property of the one devoting his or her personal efforts. Any enhancement in value, from whatever cause, shall inure to the benefit of the owner of the assets. If one party devotes labor to the separate property of the other, the value of such labor, or any resulting enhancement in value, shall not give the party devoting the labor any legal or equitable interest in the other's separate property, unless otherwise agreed in writing.

3. All wages, salary and other benefits relating to the employment or personal services of either party and earned or accrued during the marriage shall be the separate property of the spouse who earned such wages, salary and other benefits relating to employment.

4. It is agreed and understood that after marriage, Kaseburg will devote a portion of his/her time to the management and enhancement of his/her separate estate and the future rents, issue and profits thereof, and that this will not give Bowman or the community a claim against his/her separate estate.

5. All direct and indirect compensation for personal services, expertise or labor of such party, including salary, wages, commissions, goods and services received by such party as compensation, appreciation of, and income earned by such party's separate property that is

attributable to such party's management, effort and skill, and any and all other compensation from any source, including self-employment.

6. Labor. Because of the difficulty of valuing one spouse's contribution of time, services, energies or labor, it is expressly agreed by the parties, unless and to the extent later agreed to the contrary by them in writing, as follows:

- A. Labor on Other Party's Assets: If a party contributes time, services or labor to the other party's separate property, the contributing party hereby waives any separate or community property lien in interest with respect to such property (or any other separate community property rights) that might otherwise arise by virtue of such contribution.
- B. Labor on Party's Own Assets: If a party contributes time, services or labor to such party's own separate property, the non-contributing party waives any separate or community property lien in interest with respect to such property (or any other separate or community property right) that might otherwise arise by virtue of such

7. A joint bank account shall be opened entitled "Community Account," on which checks or withdrawals shall be signed by either party. All deposits into the Community Account shall be community property. Any assets acquired with Community Account funds shall be community property. All community living expenses shall be paid from the Community Account.

8. If the parties are living together in a residence owned by Kaseburg, the mortgage (deed of trust), real estate taxes, insurance, utilities, homeowner's dues and ordinary repairs on said residence shall be paid from the Community Account.

#### 9. Taxes After Marriage.

A. Option to File Joint Return. Upon the mutual agreement of the parties, they may file joint federal, state and local income tax returns for the year in which it shall be legally permissible for the parties to file such returns. Such joint returns shall be prepared by a duly licensed Certified Public Accountant upon whom the parties shall agree. The expense for the preparation of the joint returns shall be shared by the parties in proportion to their respective gross incomes.

B. Allocation of Tax Liabilities. Each party shall pay a pro rata share of the income taxes due on any joint returns filed by the parties. In computing such share, the taxable income of each party shall include all income reportable by such party under the Code in effect from time to time, and each party shall be entitled to his or her allocable deductions and credits. To the extent that one party's deductions and credits exceed his or her income, the excess deductions and credits shall be applied against the other party's taxable income for such year; provided, however, to the extent an excess deduction or credit of one party is used to reduce the tax liability of the other party, the other party whose taxes were reduced



## Obligations of Parties

10. All obligations incurred by a party, except for community living expenses, shall be the separate obligations of the incurring party, and the incurring party shall hold the other party and the community harmless from such obligations.

11. It is not the parties' intention to obligate the community credit or assets for the benefit of his or her separate estate, but certain of their activities may have that effect as a matter of law. The fact that the incurring of an obligation by a party with respect to a third person may be deemed to obligate the community credit or assets shall not give the community or the other party any legal or equitable interest in the incurring party's separate property. The incurring party shall hold the other party and the community harmless from any such obligations.

12. The parties recognize that if one of them desires to purchase or sell real property or personal property as that person's separate property, or should a party desire to encumber separate real property or personal property, the third party buyer, seller or creditor may require the signature or written consent of the other spouse, because of the community property laws of the state of Washington. If requested, the other spouse shall join in, or consent in writing to, such transaction, but such joining in, or consenting, shall not give that party or the community any interest in the other's separate real property or separate personal property. The party owning the separate property shall hold the other party harmless from any liability or loss which may result because of the other spouse joining in, or consenting to, a transaction in order to facilitate the transaction.

### 13. Debts and Credit Transactions

A. No Power to Obligate. Neither party will obligate the separate property belonging to the other party in any manner whatever.

B. No Liability for Prior Debts. Neither party will be liable for the debts or liabilities of the other incurred before the marriage.

C. Title to Property and Names on Credit Cards. Either party may retain or obtain title to property, or credit or credit cards, in his or her name alone. The manner in which title is held shall not be determinative of whether an asset is separate or community property.

D. Neither party may retain or obtain credit or credit cards in his or her name alone, without making provision for the other party to be authorized to use such credit. The preceding sentence shall not be deemed to prohibit the parties from obtaining credit or credit cards jointly and in both their names, but any obligations incurred through the use of such credit or credit cards shall be the parties' separate obligations and shall be paid from their separate property in proration to their respective shares of such obligations.

14. Separate Debts, Obligations and Liabilities. Each party further agrees that each shall be and remain solely responsible for his or her separate debts, obligations and liabilities,

whether fixed or contingent, and whether incurred prior to or after their marriage. Each party shall indemnify and hold the other harmless from all liabilities now owed by him or her or hereafter incurred or arising out of his or her separate property. Each party shall be responsible for meeting financial obligations, if any, to his or her children solely from his or her separate property and earnings.

15. Dissolution or Separation. It is the intent of the parties, and each so covenants, warrants and agrees, that in the event of the dissolution of their marriage or separation, and regardless of the cause thereof:

A. Neither shall make any claim, and neither is entitled to, nor will receive, any of the separate property of the other;

B. Each will be responsible for and bear his or her own attorneys fees and costs incurred in connection with such dissolution or separation;

C. In dividing assets and liabilities of their marital community, the separate property of each party shall not be taken into account;

D. Their community property will be divided as equally as possible;  
and

E. Neither party shall make claim for spousal maintenance against the other and each party hereby waives any right, by statute, common law or otherwise, to spousal maintenance against the other.

F. In the event that a child is born or adopted during the contemplated marriage herein, then and in that event only, Kaseburg agrees to pay to Bowman \$500 per month if she is awarded custody of the child or children, in addition to any child support award pursuant to the laws of the State of Washington. Such sum shall be adjusted on an annual basis by the percentage increase or decrease in the Consumer Price Index. This provision shall not apply to any child of a previous marriage or any other child not from the blood of Kaseburg or not officially adopted by Kaseburg.

16. With respect to the dissolution of the parties' marriage or separation, the parties each acknowledge that his or her counsel discussed with him or her the provisions of RCW 26.09.080 (dealing with a court's authority to make a just and equitable disposition of the parties' property, both separate and community) and the fact that this agreement operates to waive a party's right to a just and equitable division of the parties' separate and community property.

B. Other Community or Joint Property. The parties agree that all their community or joint property shall be divided equally. If any such community or joint property is not easily dividable, the parties will agree on the value of that property and allocate the total community or joint property in a manner that accomplishes an equal division, as they then agree.

DATED this 18 day of Aug, 2000.

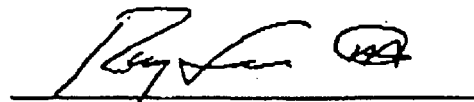
  
Jeffrey Brock Kaseburg

  
Gwendolyn Kay Bowman

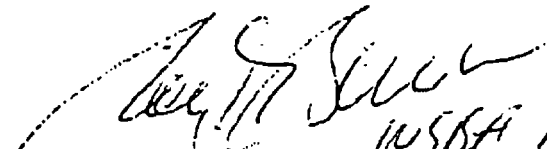
### CERTIFICATION OF ATTORNEY

I hereby certify that I am a duly licensed attorney admitted to practice law in the state of Washington; that I have consulted with Bowman, who is a party to the foregoing Agreement made in contemplation of her marriage to Kaseburg, and that I have fully advised him/her of his/her property rights and of the legal significance of the foregoing Agreement; that he/she has acknowledged his/her full and complete understanding of the legal consequences and of the terms and provisions of the foregoing Agreement.

ORIGINAL

  
Roy Lee H W.S.B.A. #20525

11.11.03

  
WSBA 1157

## Schedule A

1. 6806 Old Vandermark Rd. E. Parcel Number R 303720-007-0
2. Mad Dogs Café and 85% of its net assets.
3. \$50,000.00 cash.
4. 98' Dodge truck
5. 99' jet ski
6. All Grandma Kaseburgs Fostoria crystal
7. All past and future inheritances

## Schedule B

1. Antique Furniture
  - A. Grandfather Clock
  - B. China Cabinet
  - C. Side Board
2. 99' three seat jet ski.



## **APPENDIX C**

**SCHEDULE C**  
**(Form 1040)**

**Profit or Loss From Business**  
**(Sole Proprietorship)**

OMB No. 1545-0074

**2003**  
**09**

Department of the Treasury  
Internal Revenue Service (99)

► Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.  
► Attach to Form 1040 or 1041. ► See Instructions for Schedule C (Form 1040).

Name of proprietor <b>JEFFREY B KASEBURG</b>		Social security number (SSN) [REDACTED]
A Principal business or profession, including product or service (see instructions) <b>RESTAURANT</b>		B Enter code from instructions ► <b>722110</b>
C Business name. If no separate business name, leave blank. <b>THE MAD DOG FAMILY DINER</b>		D Employer ID number (EIN), if any
E Business address (including suite or room no.) ► <b>20825 HWY 410 EAST; STE 383</b> City, town or post office, state, and ZIP code <b>BONNEY LAKE, WA 98391</b>		
F Accounting method: (1) <input checked="" type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) ►		
G Did you 'materially participate' in the operation of this business during 2003? If 'No,' see instructions for limit on losses .... <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
H If you started or acquired this business during 2003, check here		

**Part I Income**

1 Gross receipts or sales. <b>Caution.</b> If this income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, see the instructions and check here	1	[REDACTED]
2 Returns and allowances	2	[REDACTED]
3 Subtract line 2 from line 1	3	[REDACTED]
4 Cost of goods sold (from line 42 on page 2)	4	[REDACTED]
5 Gross profit. Subtract line 4 from line 3	5	[REDACTED]
6 Other income, including Federal and state gasoline or fuel tax credit or refund	6	[REDACTED]
7 Gross income. Add lines 5 and 6	7	[REDACTED]

**Part II Expenses.** Enter expenses for business use of your home only on line 30.

8 Advertising	8	[REDACTED]	19 Pension and profit-sharing plans	19	[REDACTED]
9 Car and truck expenses (see instructions)	9	[REDACTED]	20 Rent or lease (see instructions):		
10 Commissions and fees	10	[REDACTED]	a Vehicles, machinery, and equipment	20a	[REDACTED]
11 Contract labor (see instructions)	11	[REDACTED]	b Other business property	20b	[REDACTED]
12 Depletion	12	[REDACTED]	21 Repairs and maintenance	21	[REDACTED]
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	[REDACTED]	22 Supplies (not included in Part III)	22	[REDACTED]
14 Employee benefit programs (other than on line 19)	14	[REDACTED]	23 Taxes and licenses	23	[REDACTED]
15 Insurance (other than health)	15	[REDACTED]	24 Travel, meals, and entertainment:		
16 Interest:			a Travel	24a	[REDACTED]
a Mortgage (paid to banks, etc)	16a	[REDACTED]	b Meals and entertainment		
b Other	16b	[REDACTED]	c Enter nondeductible amount included on line 24b (see instrs)		
17 Legal & professional services	17	[REDACTED]	d Subtract line 24c from line 24b	24d	[REDACTED]
18 Office expense	18	[REDACTED]	25 Utilities	25	[REDACTED]
28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28	[REDACTED]	26 Wages (less employment credits)	26	[REDACTED]
29 Tentative profit (loss). Subtract line 28 from line 7	29	[REDACTED]	27 Other expenses (from line 48 on page 2)	27	[REDACTED]
30 Expenses for business use of your home. Attach Form 8829	30	[REDACTED]			
31 Net profit or (loss). Subtract line 30 from line 29.	31	[REDACTED]			

• If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.  
• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

• If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you must attach Form 6198.

32a ☒ All investment is at risk.

32b ☐ Some investment is not at risk.

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule C (Form 1040) 2003

## **APPENDIX D**

# SCHEDULE C

(Form 1040)

Department of the Treasury  
Internal Revenue Service

## Profit or Loss From Business (Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.  
Attach to Form 1040 or 1041. See Instructions for Schedule C (Form 1040).

OMB No. 1545-0074

2004

09

Name of proprietor

JEFFREY B KASEBURG

Social security number (SSN)

Enter code from instructions

722110

Employer ID number (EIN), if any

A Principal business or profession, including product or service (see instructions)

RESTAURANT

C Business name. If no separate business name, leave blank.

THE MAD DOG FAMILY DINER

E Business address (including suite or room no.) 20825 HWY 410 EAST; STE 383  
City, town or post office, state, and ZIP code BONNEY LAKE, WA 98391

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you 'materially participate' in the operation of this business during 2004? If 'No,' see instructions for limit on losses ☒ Yes ☐ No

H If you started or acquired this business during 2004, check here

### Part I Income

1	Gross receipts or sales. <b>Caution.</b> If this income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, see the instructions and check here	1	
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit. Subtract line 4 from line 3	5	
6	Other income, including Federal and state gasoline or fuel tax credit or refund	6	
7	Gross income. Add lines 5 and 6	7	

### Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising	8		19	Pension and profit-sharing plans	19	
9	Car and truck expenses (see instructions)	9		20	Rent or lease (see instructions):	20	
10	Commissions and fees	10		20a	a Vehicles, machinery, and equipment	20a	
11	Contract labor (see instructions)	11		20b	b Other business property	20b	
12	Depletion	12		21	Repairs and maintenance	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		22	Supplies (not included in Part III)	22	
14	Employee benefit programs (other than on line 19)	14		23	Taxes and licenses	23	
15	Insurance (other than health)	15		24	Travel, meals, and entertainment:	24	
16	Interest:			24a	a Travel	24a	
16a	a Mortgage (paid to banks, etc)	16a			b Meals and entertainment		
16b	b Other	16b			c Enter nondeductible amount included on line 24b (see instrs)		
17	Legal & professional services	17		24d	d Subtract line 24c from line 24b	24d	
18	Office expense	18		25	Utilities	25	
28	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28		26	Wages (less employment credits)	26	
29	Tentative profit (loss). Subtract line 28 from line 7	29		27	Other expenses (from line 48 on page 2)	27	
30	Expenses for business use of your home. Attach Form 8829	30					
31	Net profit or (loss). Subtract line 30 from line 29.	31					

If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.

If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.

If you checked 32b, you must attach Form 6198.

32a ☒ All investment is at risk.

32b ☐ Some investment is not at risk.

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule C (Form 1040) 2004

FDZ0112 05/06/04

## **APPENDIX E**

**Profit or Loss From Business**  
(Sole Proprietorship)

OMB No. 1545-0074

**2005**

Attachment  
Sequence No. **09**

Department of the Treasury  
Internal Revenue Service (99)

Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.  
Attach to Form 1040 or 1041. See Instructions for Schedule C (Form 1040).

Name of proprietor <b>JEFFREY B KASEBURG</b>		Social security number (SSN) [REDACTED]
<b>A</b> Principal business or profession, including product or service (see instructions) <b>RESTAURANT</b>	<b>B</b> Enter code from instructions 722110	
<b>C</b> Business name. If no separate business name, leave blank. <b>THE MAD DOG FAMILY DINER</b>	<b>D</b> Employer ID number (EIN), if any	
<b>E</b> Business address (including suite or room no.), city, town or post office, state, and ZIP code 20825 HWY 410 EAST; STE 383 BONNEY LAKE, WA 98391		
<b>F</b> Accounting method: (1) <input checked="" type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) _____		
<b>G</b> Did you 'materially participate' in the operation of this business during 2005? If 'No,' see instructions for limit on losses. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>H</b> If you started or acquired this business during 2005, check here <input type="checkbox"/>		

**Part I Income**

1 Gross receipts or sales. <b>Caution.</b> If this income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, see the instructions and check here <input type="checkbox"/>	1	[REDACTED]
2 Returns and allowances	2	[REDACTED]
3 Subtract line 2 from line 1	3	[REDACTED]
4 Cost of goods sold (from line 42 on page 2)	4	[REDACTED]
5 Gross profit. Subtract line 4 from line 3	5	[REDACTED]
6 Other income, including Federal and state gasoline or fuel tax credit or refund	6	[REDACTED]
7 Gross income. Add lines 5 and 6	7	[REDACTED]

**Part II Expenses.** Enter expenses for business use of your home only on line 30.

8 Advertising	8	18 Office expense	18	[REDACTED]
9 Car and truck expenses (see instructions)	9	19 Pension and profit-sharing plans	19	[REDACTED]
10 Commissions and fees	10	20 Rent or lease (see instructions):		
11 Contract labor (see instructions)	11	a Vehicles, machinery, and equipment	20a	[REDACTED]
12 Depletion	12	b Other business property	20b	[REDACTED]
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	21 Repairs and maintenance	21	[REDACTED]
14 Employee benefit programs (other than on line 19)	14	22 Supplies (not included in Part III)	22	[REDACTED]
15 Insurance (other than health)	15	23 Taxes and licenses	23	[REDACTED]
16 Interest:		24 Travel, meals, and entertainment:		
a Mortgage (paid to banks, etc)	16a	a Travel	24a	[REDACTED]
b Other	16b	b Deductible meals and entertainment	24b	[REDACTED]
17 Legal & professional services	17	25 Utilities	25	[REDACTED]
28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28	26 Wages (less employment credits)	26	[REDACTED]
29 Tentative profit (loss). Subtract line 28 from line 7	29	27 Other expenses (from line 48 on page 2)	27	[REDACTED]
30 Expenses for business use of your home. Attach Form 8829	30			
31 Net profit or (loss). Subtract line 30 from line 29.	31			

- If a profit, enter on **Form 1040, line 12**, and also on **Schedule SE, line 2** (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.
- If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

- If you checked 32a, enter the loss on **Form 1040, line 12**, and also on **Schedule SE, line 2** (statutory employees, see instructions). Estates and trusts, enter on Form 1041, line 3.

- If you checked 32b, you must attach **Form 6198**. Your loss may be limited.

32a ☒ All investment is at risk.

32b ☐ Some investment is not at risk.

**BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.**

Schedule C (Form 1040) 2005

## **APPENDIX F**

602 266 903 1+1

086238



**21185 Hwy, 410 E.  
Bonney Lake, Wa. 98390**

June 14, 2004

Dean Lau  
Liquor Control Board  
Licensing & Regulation  
3000 Pacific Ave SE  
Olympia Wa. 98504-3098

**RE: License NO. 086238-1K, requested statement assigning the business property to the LLC.**

Dear Mr. Lau,

In reference to your letter dated June 10<sup>th</sup> 2004, I Jeff Kaseburg being the only person of interest of the old Mad Dog's Café Inc. do hereby assign all the business property to GEF Enterprises LLC.

If you should need anything else please call 206-459-4555 so I may get it to you right away.  
Thank You,

Jeffrey Kaseburg  
6806 Vandermark Rd. E.  
Bonney Lake, Wa. 98390

**RECEIVED**  
JUN 15 2004  
LICENSE DIVISION



**21185 Hwy, 410 E.  
Bonney Lake, Wa. 98391**

February 10, 2006

Joy Rosado  
Investigator,  
Liquor Control Board  
Licensing & Regulation  
3000 Pacific Ave SE  
Olympia Wa. 98504-3098

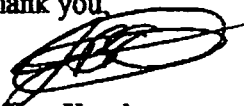
**RECEIVED**  
FEB 14 2006  
LICENSE DIVISION

**RE: License NO. 086238-1Q,**

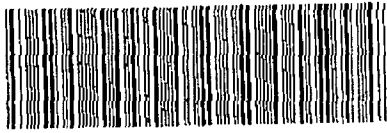
Dear Ms. Rosado,

By way of introduction my name is Jeff Kaseburg. I own Mad Dog's Family Diner (G.E.F. Enterprises L.L.C.) Of which I closed. I have a new company called Doggie Style Enterprises L.L.C. Which is DBA. As the Mad Dogs Diner & Pub. I here-by assign all the business assets from GEF Enterprises to Doggie Style Enterprises L.L.C.

Thank you

  
Jeffrey Kaseburg  
6806 Vandermark Rd. E.  
Bonney Lake, Wa. 98391  
206-459-4555

## **APPENDIX G**



09-3-01481-6 36310259 TRMM 04-29-11

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

In re the Marriage of ) NO 09-3-01481-6  
GWENDOLYN KASEBURG, )  
Petitioner, )  
and )  
JEFFREY KASEBURG, )  
Respondent )

RESPONDENT'S TRIAL  
MEMORANDUM

FILED  
DEPT. 6  
IN OPEN COURT

APR 21 2011

Pierce County, Clerk  
By *[Signature]*  
DEPUTY

BACKGROUND INFORMATION

The parties were married on August 18, 2000 and separated on October 18, 2008. This was the first marriage for the Respondent and the second for the Petitioner. The parties had no children together, but Petitioner has two grown children from her first marriage. Respondent has no children.

The parties met in July, 1993 and resided together for several years prior to their marriage. Prior to the date of marriage, each party had relationships with other individuals. The parties never commingled their assets or resources.

In August, 1998, prior to the parties' marriage, the Respondent borrowed money from his parents and purchased a parcel of land located at 6806 Vandermark Road East, Bonney Lake, Washington, for \$120,000.00. The Respondent put a 5<sup>th</sup> wheel on the property, in which both parties resided, while

RESPONDENT'S TRIAL MEMORANDUM - 1

Original

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1 Respondent built the home, which was completed in March, 1999. Petitioner  
 2 contributed nothing to the purchase of the parcel or to the costs associated with  
 3 building the home.

4 In 1999, the Respondent and his mother purchased Mad Dogs Café, for  
 5 \$73,000.00. The restaurant was initially run by Respondent, with assistance from  
 6 his parents. Later, the Petitioner also became an employee of the business, doing  
 7 the books, waitressing and managing staff. In 2004, the business was expanded,  
 8 remodeled and obtained a liquor license.

9 In May, 2006, Respondent sold the property located at 6806 Vandermark  
 10 Road East for a gross sales price of \$1,325,000.00. The sales proceeds remained  
 11 Respondent's separate property. After the sale, the parties moved to a rental home  
 12 in Buckley.

13 In August, 2006, Respondent purchased a parcel of land located at 14104  
 14 282<sup>nd</sup> Avenue East in Buckley (Burnett), Washington, for \$350,000.00. The parcel  
 15 was purchased with some of the proceeds from the sale of the Vandermark  
 16 property. The 282<sup>nd</sup> Avenue East property was put in Respondent's name alone,  
 17 as his separate property, and the Petitioner signed a Quit Claim Deed to the  
 18 Respondent, which was recorded with the Pierce County Auditor on August 16,  
 19 2006. This was a vacant parcel of land and the Respondent began to build a home  
 20 on it. The parties remained at the rental home in Buckley while Respondent built  
 21 the house on 282<sup>nd</sup> Avenue East. Again, the Petitioner did not contribute any labor  
 22 or funds towards the purchase price of the land or the costs associated with building  
 23 the home.

24 The parties separated in October, 2008, when the Respondent moved from  
 25 the rental home to the unfinished home on 282<sup>nd</sup> Avenue East.  
 26

27 RESPONDENT'S TRIAL MEMORANDUM - 2

28 **STEPHEN W. FISHER**

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1 The Petitioner was living with her boyfriend and several other adults, in  
 2 Kalama, Washington She has indicated that she had been hired by Bankers  
 3 Insurance Company and was to begin work as soon as she has completed her life  
 4 insurance test Petitioner has been working as waitstaff in southern Washington,  
 5 and has significant experience in the restaurant business and she also has  
 6 bookkeeping skills

7 The Respondent is currently residing in the 282<sup>nd</sup> Avenue East house, and  
 8 continues to work on completing the home The building permit is scheduled to  
 9 expire on May 15, 2011

10 The Respondent's restaurant, Mad Dogs Diner, has seen a decrease in  
 11 business due to the economy He currently has business income of approximately  
 12 \$1,200 00, per month, and Respondent receives other financial benefits from the  
 13 business, which are reconciled by his accountant at year-end The Respondent  
 14 would close the Diner, but for the outstanding lease of \$72,000 00, per year The  
 15 Respondent's lease is up for renewal in 2012, and he has concerns about the future  
 16 of his business

17 The Respondent's only source of funds is the monthly loan he receives from  
 18 his parents The loans are often \$5,000 00, per month and have averaged  
 19 \$1,500 00, per month, over the last 24 months

#### 20 LOANS FROM RESPONDENT'S PARENTS

21 Prior to and throughout the parties' marriage, the Respondent borrowed  
 22 substantial funds from his parents, to finance his lifestyle and the community  
 23 lifestyle The Respondent signed Promissory Notes to his parents, and all loans are  
 24 still outstanding, as follows

25  
 26 July 31, 1993 \$ 9,775 00

27 RESPONDENT'S TRIAL MEMORANDUM - 3

28 **STEPHEN W FISHER**

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1	May 27, 1995	\$ 27,315 00
2	July 15, 1996	\$301,527 60
3	March 10, 1999	\$ 73,000 00
4	February 25, 2000	\$281,166 00
5	November 24, 2002	\$158,000 00
6	June 5, 2004	<u>\$ 10,000 00</u>
7	<b>Total Owed:</b>	<b>\$860,783.60</b>

8           These debts are the Respondent's separate debts. Respondent has repaid  
9 approximately \$149,000 00 to his parents, but he has borrowed an additional  
10 \$34,500 00 since the date of separation. The balance owed to Respondent's  
11 parents is approximately \$746,000 00.

#### 12                           PRENUPTIAL AGREEMENT

13           Prior to the parties' marriage, and at the suggestion of the Respondent's  
14 attorney, Roy Brewer, the parties discussed entering into a Prenuptial Agreement.  
15 The Prenuptial Agreement was drafted by Mr. Brewer. Roy Lee, III acted as  
16 Petitioner's attorney by reviewing the Agreement and requesting that some changes  
17 be made.

18           After the changes were made, Mr. Lee reviewed the document with  
19 Petitioner, and discussed the ramifications of signing it. Both Petitioner and Mr. Lee  
20 signed the Prenuptial Agreement approximately one week prior to the wedding.  
21 Respondent and his attorney signed the Prenuptial Agreement on the day of the  
22 wedding, at Mr. Brewer's office.

23           The Prenuptial Agreement provides, in part, that the Vandermark property  
24 would be Respondent's separate property. The Agreement also provides that  
25 Respondent would receive 85% of Mad Dogs Café. While the Agreement is silent  
26

27 RESPONDENT'S TRIAL MEMORANDUM - 4

28

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1 as to the status of the other 15% of Mad Dogs Café, Respondent testified at his  
2 deposition that it was always his intention that Petitioner would receive the 15%

3 The Prenuptial Agreement provides for no award of attorneys fees and no  
4 spousal maintenance to either party

5 Following their marriage, the parties kept all accounts and property, except  
6 for some vehicles, separate

7 In her deposition, the Petitioner acknowledged that it was her signature on  
8 the Prenuptial Agreement and that she signed a Prenuptial Agreement

9 It is the Respondent's position that the Prenuptial Agreement is valid and  
10 should be enforced by the Court, as outlined in the Trial Memorandum of Points and  
11 Authorities Re Prenuptial Agreement

#### 12 PROPOSED DIVISION OF ASSETS AND DEBTS

13 The Respondent owned both the Vandermark property and his business,  
14 Mad Dogs Diner, prior to the parties' marriage, with no financial or labor contribution  
15 of any kind by the Petitioner for either the property or the business. The business  
16 and the proceeds of the sale of the Vandermark property should be awarded to the  
17 Respondent as his separate property

18 On October 29, 2009, Steve Kessler valued Mad Dogs Diner at  
19 \$100,000.00. The Respondent believes that, pursuant to the Prenuptial Agreement,  
20 the Petitioner is entitled to 15% of the value of Mad Dogs Diner. The Respondent  
21 is prepared to pay the sum of \$15,000.00 to the Petitioner

22 The home located at 282<sup>nd</sup> Avenue East is valued at \$686,800.00 for the  
23 2011 tax year. Columbia Bank is owed approximately \$387,500.00 for a  
24 construction loan. The land on which the home sits was purchased from the  
25 proceeds of the sale of the Vandermark property, which is Respondent's separate  
26

27 RESPONDENT'S TRIAL MEMORANDUM - 5

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1 property The home on the 282<sup>nd</sup> Avenue East land was built, in part, with the  
 2 proceeds from the Vandermark sale as well as from the construction loan The  
 3 funds used to pay on the construction loan come from the Respondent's parents

4 Neither the Petitioner nor the community have made any contribution toward  
 5 the 282<sup>nd</sup> Avenue East home Furthermore, in August, 2006, the Petitioner signed  
 6 a Quit Claim Deed to the Respondent for this property. The 282<sup>nd</sup> Avenue East  
 7 property should be awarded to the Respondent as his separate property

8 The only personal property jointly owned by the parties is the 2006 Saab 9-  
 9 7X automobile An agreement was reached in October, 2009 as to the value of the  
 10 Saab, that the Respondent would pay the remaining balance owed on the vehicle  
 11 and that the vehicle would be awarded to the Petitioner as a partial distribution to  
 12 her, to offset against the final property distribution The Respondent has paid off  
 13 the balance due on the automobile loan The value of the distribution to Petitioner  
 14 of the Saab vehicle is \$20,000 00

15 The Respondent should be awarded the 2006 Chevrolet truck, the 2010  
 16 Toyota purchased by Respondent and his mother in the summer of 2010, the 1984  
 17 dump truck, the John Deere tractor and lawnmower, the Skidoo snowmobile, and  
 18 his 10% interest in the Cessna airplane All of these assets are Respondent's  
 19 separate property

20 The Petitioner should be responsible for any and all debts incurred by her  
 21 since the date of separation, including but not limited to, her credit card, the loan  
 22 from her boyfriend Jeff Haberman, and all fees and costs associated with her  
 23 unlawful detainer

24 The Respondent should be responsible for all loans made by his parents  
 25 (\$746,000 00), the construction loan (\$387,500 00), Citicard, First Bank credit card,  
 26

27 RESPONDENT'S TRIAL MEMORANDUM - 6

28  
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1 the outstanding balance for the Skidoo snowmobile and any debt owed on the  
2 Cessna airplane

3 **LEGAL ARGUMENT RE: PROPERTY DISTRIBUTION**

4 Pursuant to the Prenuptial Agreement at page 5, number 15(A), (C) and (D),  
5 neither party shall make any claim, and neither is entitled to, nor will received any  
6 of the separate property of the other. In dividing assets and liabilities of the marital  
7 community, the separate property of each party shall not be taken in to account,  
8 and the community property will be divided as equally as possible

9 RCW 26 09 080 states as follows

10 "In a proceeding for dissolution of the marriage, legal  
11 separation, declaration of invalidity, or in a proceeding for  
12 disposition of property following dissolution of marriage by a  
13 court which lacked personal jurisdiction over the absent  
14 spouse or lacked jurisdiction to dispose of the property, the  
15 court shall, without regard to marital misconduct, make such  
16 disposition of the property and liabilities of the parties, either  
17 community or separate, as shall appear just and equitable after  
18 considering all relevant factors including, but not limited to

16 (1) The nature and extent of the community property,

17 (2) The nature and extent of the separate property,

18 (3) The duration of the marriage, and

19 (4) The economic circumstances of each spouse at the time  
20 the division of property is to become effective, including the  
21 desirability of awarding the family home or the right to live  
22 therein for reasonable periods to a spouse with whom the  
23 children live the majority of the time "

24 Presumptions play a significant role in determining the character of property  
25 as separate or community property. Kenneth W. Webber, Washington Practice  
26 Family and Community Property Law, §10 1, at 133 (1997). Perhaps more than in

27 RESPONDENT'S TRIAL MEMORANDUM - 7

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1 any other area of law, presumptions play an important role in determining ownership  
 2 of assets and responsibility for debt in community property law. The presumptions  
 3 are true presumptions, and in the absence of evidence sufficient to rebut an  
 4 applicable presumption, the Court must determine the character of property  
 5 according to the weight of the presumption. *Id*

6 The character of property as separate or community property is determined  
 7 as of the date of acquisition. Harry M. Cross, The Community Property Law in  
 8 Washington, 61 Wash. L. REV. 13, 39 (1986). Under the inception of titled theory,  
 9 property acquired subject to contract or mortgage is acquired when the obligation  
 10 is undertaken. *Id*, See also In re Estate of Binge, 5 Wn.2d 446, 105 P.2d 689  
 11 (1940), Beam v. Beam, 18 Wn. App. 444, 569 P.2d 719 (1997). Here, the evidence  
 12 establishes that the real property and the business were the separate property of  
 13 Mr. Kaseburg, at the time that he married Gwen Kaseburg. Once the separate  
 14 character of property is established, a presumption arises that it remains separate  
 15 property in the absence of sufficient evidence to show an intent to transmute the  
 16 property from separate to community property. 19 Webber, *supra*, at 134. As the  
 17 Supreme Court has stated in Guye v. Guye, 63 Wash. 340, 115 P. 731 (1911).  
 18 Moreover, the right of the spouses in their separate property is as sacred as is the  
 19 right in their community property, and when it is once made to appear that property  
 20 was once of a separate character, it will be presumed that it maintains that  
 21 character until some direct and positive evidence to the contrary is made to appear.  
 22 The standard elicited in Guye necessary to overcome the presumption is that there  
 23 must be clear and convincing evidence establishing the intent to transmute the  
 24 property from separate property to community property. The evidence must show  
 25 the intent of the spouse owning the separate property to change its character from  
 26

27 RESPONDENT'S TRIAL MEMORANDUM - 8

28 STEPHEN W. FISHER

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1 separate to community property Where the Court is dealing with real property, an  
 2 acknowledged writing is generally required Cross, supra, at 102 and N 485 There  
 3 is nothing to establish that Mr Kaseburg ever intended to change the character of  
 4 the real property or the character of his business from separate property to  
 5 community property In the absence of clear and convincing evidence to the  
 6 contrary, the issues relating to the real property and Mr Kaseburg's business must  
 7 be resolved on the weight of the presumption that the property and business was  
 8 Mr Kaseburg's separate property

#### 9 LEGAL ARGUMENT RE: SPOUSAL MAINTENANCE

10 The Prenuptial Agreement of August 18, 2000, on Page 5, number 15(E)  
 11 states that neither party shall make claim for spousal maintenance against the other  
 12 and each party hereby waives any right, by statute, common law or otherwise, to  
 13 spousal maintenance against the other

14 Furthermore, neither party has the ability to pay maintenance to the other  
 15 Therefore should be no award of spousal maintenance, based upon the terms of the  
 16 Prenuptial Agreement, signed by the parties in August, 2000

#### 17 An Award of Spousal Maintenance is Not Appropriate Where Wife Has an Ability to 18 Obtain and Maintain Gainful Employment

19 An award of spousal maintenance is governed by RCW 26.09.090  
 20 Foremost among the factors to be considered by the Court under this statute are

21 I The financial resources of the party seeking maintenance and his/her  
 22 ability to meet his/her needs independently (including consideration of property  
 23 awarded to her),

24 II The time necessary to acquire sufficient education or training to  
 25 enable the party seeking maintenance to find employment appropriate to skills,  
 26

27 RESPONDENT'S TRIAL MEMORANDUM - 9

28  
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1 interest and style of life;

2       iii       The standard of living established during the marriage,

3       iv       The duration of the marriage,

4       v       The age, physical and emotional conditions and financial obligations  
5 of the spouse seeking maintenance, and

6       v       The ability of the spouse from whom maintenance is sought to meet  
7 his needs and financial obligations while meeting those of the spouse seeking  
8 maintenance.

9       Spousal maintenance is not a matter of right. When the wife has the ability  
10 to earn a living, it is not the policy of the law of this state to give her a perpetual lien  
11 on her divorced husband's future income. Morgan v. Morgan, 50 Wn 2d 639, 642,  
12 369 P 2d 516 (1962), (citing Warning v. Warning, 40 Wn 2d 903, 247 P 2d 249  
13 (1952), Lockhart v. Lockhart, 145 Wn 210, 259 P 385 (1927)). Further, it is not the  
14 policy of the law to place a permanent responsibility upon a divorced spouse to  
15 support a former wife, she is under an obligation to prepare herself so that she  
16 might become self-supporting. Cleaver v. Cleaver, 10 Wn App 14, 20, 516 P2d  
17 508 (1974), (citing Berg v. Berg, 72 Wn 2d 532, 434 P 2d 1 (1967)).

18       In this case, the Petitioner has the ability to be gainfully employed, based  
19 upon her prior work history. Petitioner has not demonstrated a need for long-term  
20 spousal maintenance, nor presented evidence that she has any issues that would  
21 preclude her from obtaining any form of gainful employment. The Petitioner has the  
22 ability to work and build a career.

23       The duration of the marriage would be deemed a relatively short-term  
24 marriage. The standard of living established during the marriage was marginal, at  
25 best.

26  
27 RESPONDENT'S TRIAL MEMORANDUM - 10

28       **STEPHEN W. FISHER**

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1 The final factor of RCW 26.09.090 is the husband's ability to pay, based  
 2 upon his needs and financial obligations. The Respondent has approximately  
 3 \$1,200,000.00 in separate debt, and has continued to borrow money from his  
 4 parents to survive. The Respondent is working to support himself, and nothing  
 5 precludes Petitioner from pursuing gainful employment to support herself.

6 **LEGAL ARGUMENT RE: QUASI-MARITAL RELATIONSHIP**

7 Our Legislature requires a solemnized "civil contract" in order for a marriage  
 8 to be valid. RCW 26.04.010(1), see also RCW 26.04.050, .120, .130, Meton v  
 9 Indus. Ins. Dep't., 104 Wash. 652, 655, 177 P. 696 (1919), In re Estate of  
 10 McLaughlin, 4 Wash. 570, 588-89, 30 P. 651 (1892), Roe v. Ludtke Trucking, Inc.,  
 11 46 Wn. App. 816, 819, 732 P.2d 1021 (1987). Common-law marriage is not  
 12 recognized under Washington law. Peffley-Warner v. Bowen, 113 Wn.2d 243, 249,  
 13 778 P.2d 1022 (1989), In re Estate of Gallagher, 35 Wn.2d 512, 514-15, 213 P.2d  
 14 621 (1950). Wholly unrelated to either kind of marriage, courts have recognized the  
 15 existence of meretricious relationships, which this court has determined to be  
 16 stable, cohabitating relationships. Connell v. Francisco, 127 Wn.2d 339, 898 P.2d  
 17 831 (1995).

18 In Connell, *supra*, the Court characterized a meretricious relationship as a  
 19 stable marital-like relationship where both parties cohabit with knowledge that a  
 20 lawful marriage between them does not exist. The Court listed five relevant factors  
 21 to analyze when a meretricious relationship exists: "continuous cohabitation,  
 22 duration of the relationship, purpose of the relationship, pooling of resources and  
 23 services for joint projects, and the intent of the parties." Connell, 127 Wn.2d at 346  
 24 (citing Lindsey, 101 Wn.2d at 304-05, Latham, 87 Wn.2d at 554, In re Marriage of  
 25 DeHollander, 53 Wn. App. 695, 699, 770 P.2d 638 (1989)). These characteristic

26  
 27 RESPONDENT'S TRIAL MEMORANDUM - 11

28  
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1 factors are neither exclusive nor hypertechnical. Rather, these factors are meant  
 2 to reach all relevant evidence helpful in establishing whether a meretricious  
 3 relationship exists. Connell, 127 Wn 2d at 346. Thus, whether relationships are  
 4 properly characterized as meretricious depends upon the facts of each case. In re  
 5 Meretricious Relationship of Sutton, 85 Wn.App. 487, 490, 933 P 2d 1069 (1997).

6 In In re Pennington, 142 Wn 2d 592, 14 P 3d 752 (2000), the Supreme  
 7 Court determined that in both the Pennington case and the Chesterfield case, the  
 8 facts failed to support the conclusion that the parties had a meretricious relationship  
 9 and the facts of neither case supported an equitable division of property justified  
 10 under other equitable theories. The Court analyzed the facts presented at trial, and  
 11 determined that after looking at the factors outlined in Connell, no quasi-marital  
 12 relationship existed.

13 In this case, there was no continuous cohabitation between the parties. For  
 14 two years, the parties dated other people. In fact, during the cohabitation, Mr.  
 15 Kaseburg had his girlfriend move in to their residence. Moreover, the Petitioner was  
 16 fully aware that the Respondent was dating other people throughout their  
 17 relationship, even shortly before their marriage. The length of the relationship was  
 18 frequently fractured by relationships with other individuals. Prior to the date of  
 19 marriage, there was no discussion of intending to get married. There was no formal  
 20 notice of any form of engagement. During the course of the cohabitation, there was  
 21 some sharing of expenses, but the expenses were minimal at best. The parties  
 22 paid their own automobile insurance and telephone bills. Titles to vehicles remained  
 23 in separate names. No properties were commingled. There were no joint bank  
 24 accounts or joint credit cards. Petitioner was never named on any of Respondent's  
 25 real property, business or other assets maintained by him. Petitioner did not  
 26

27 RESPONDENT'S TRIAL MEMORANDUM - 12

28 STEPHEN W. FISHER

(Professional Limited Liability Partnership)  
 ATTORNEY AT LAW  
 COLLEGE PARK PROFESSIONAL CENTER  
 611 19<sup>TH</sup> STREET WLSF SUITE 8  
 1100 FIRST WASHINGTON 98166  
 (253) 565-3900 FAX (253) 565-3985

1 contribute to and invest time into any of Respondent's real properties. The parties  
 2 did not vacation together and never held themselves out as being married.  
 3 Petitioner was not named on any mortgages and never signed any obligations for  
 4 funds borrowed from Respondent's parents. During the course of the cohabitation,  
 5 the Respondent expressed no intent to marry the Petitioner. As stated in In re  
 6 Pennington, the parties maintained separate accounts, purchased no significant  
 7 assets together and did not significantly or substantially pool their time and effort to  
 8 justify the equitable division of property acquired during the course of their  
 9 relationship. Therefore, the Court concluded that the relationships did not constitute  
 10 meretricious relationships and the equitable principles recognized in Connell are not  
 11 triggered by the facts. The same situation exists in this case.

#### 12 LEGAL ARGUMENT RE: ATTORNEYS FEES

13 Pursuant to the terms of the Prenuptial Agreement, on page 5, number  
 14 15(B), each party should be responsible for his or her own attorneys fees and costs.

15 If the Court is to consider an award of attorneys fees, RCW 26.09.140 sets  
 16 forth the factors to be considered in awarding attorneys fees, as follows:

17 "The court from time to time after considering the financial  
 18 resources of both parties may order a party to pay a  
 19 reasonable amount for the cost to the other party of  
 20 maintaining or defending any proceeding under this chapter  
 21 and for reasonable attorneys fees or other professional fees in  
 22 connection therewith, including sums for legal services  
 23 rendered and costs incurred prior to the commencement of the  
 24 proceeding or enforcement or modification proceedings after  
 25 entry of judgement.

26 Upon any appeal, the appellate court may, in its discretion,  
 27 order a party to pay for the cost to the other party of  
 28 maintaining the appeal and attorney's fees in addition to  
 statutory costs."

RESPONDENT'S TRIAL MEMORANDUM - 13

STEPHEN W. FISHER  
 A Professional Limited Liability Partnership  
 ATTORNEY AT LAW  
 COLLEGE PARK PROFESSIONAL CENTER  
 6311 19<sup>TH</sup> STREET WEST SUITE 8  
 FIRECREST WASHINGTON 98166  
 (206) 565-3900 FAX (206) 565-3988

1 The Trial Court must balance the needs of the spouse seeking the fees  
 2 against the ability of the other spouse to pay In re Marriage of Nelson, 62  
 3 Wn App 515, 521, 814 P 2d 1208 (1991) In calculating a fee award, a court  
 4 should consider (1) the factual and legal questions involved, (2) the time necessary  
 5 for preparation and presentation of the case, and (3) the amount and character of  
 6 the property involved. Abel v Abel, 47 Wn 2d 816, 819, 289 P 2d 725 (1955)

7 Petitioner's request for attorneys fees is not reasonable This dissolution  
 8 proceeding has not been difficult nor complex Pursuant to RCW 26 09 140, an  
 9 award of attorneys fees is based upon need and ability to pay An award of  
 10 attorneys fees is not appropriate, based upon the circumstances of this case

### 11 CONCLUSION

12 In conclusion, based upon the evidence in this case, the Court should  
 13 enforce the terms of the Prenuptial Agreement Additionally, all of Mr Kaseburg's  
 14 separate property should be awarded to him, with the accompanying debt that is  
 15 approximately \$1 2 million Because of the Petitioner's ability to maintain gainful  
 16 employment and Respondent's absolute inability to pay spousal maintenance,  
 17 Petitioner's request for spousal maintenance should be denied The same analysis  
 18 applies to the request for an award of attorneys fees In regard to Petitioner's claim  
 19 that a quasi-marital relationship existed, the facts clearly do not support such a  
 20 finding, and Petitioner's request should be denied

21 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of December, 2010

22 THE LAW OFFICES OF STEPHEN W. FISHER, PLLP

23  
 24 By 

25 STEPHEN W FISHER, WSBA #7822  
 26 Attorneys for Respondent

27 RESPONDENT'S TRIAL MEMORANDUM - 14

28  
 STEPHEN W. FISHER  
 A Professional Limited Liability Partnership  
 ATTORNEY AT LAW  
 COLLEGE PARK PROFESSIONAL CENTER  
 6314 19<sup>th</sup> STREET WEST SUITE 8  
 FIRECREST WASHINGTON 98466  
 (253) 565-3910 FAX (253) 565-3988

FILED  
COURT OF APPEALS  
DIVISION II

2013 JAN 18 AM 10:59

NO. 43190-4-II

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

---

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

In re the Marriage of:

GWENDOLYN KASEBURG,

Respondent,

v.

JEFFREY KASEBURG,

Appellant.

---

APPENDICES H to Q

to

RESPONDENT'S BRIEF

---

DAVID CORBETT PLLC  
David J. Corbett, WSBA #30895  
2106 N. Steele Street  
Tacoma, Washington 98406  
Telephone: (253) 414-5235  
david@davidcorbettlaw.com

## **APPENDIX H**



09-3-01481-6 33257204 AFRSP 11-24-09

FILED  
IN COUNTY CLERK'S OFFICE

A.M. NOV 23 2009 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTYSuperior Court of Washington  
County of Pierce

In re the Marriage of:

GWENDOLYN KASEBURG,

No. 09-3-01481-6

Petitioner,

DECLARATION OF  
JEFFREY KASEBURG

and

JEFFREY KASEBURG,

(DCLR)

Respondent.

I, JEFFREY KASEBURG, declare:

I am competent to testify to the matters contained herein and make this Declaration based upon personal knowledge.

I make this declaration in response to my wife, Gwen's, second motion and declaration for temporary orders.

Gwen and I married on August 18, 2000. We separated on October 18, 2008. We have no children of our marriage.

Prior to our marriage Gwen and I executed a prenuptial agreement. The original of which has been recorded with the Pierce County Auditor along with declarations from our attorneys, Roy G. Brewer and Roy Lee III. A copy of the prenuptial agreement and the declarations were already filed with the court and attached to my prior declaration. I will not attach them again, rather I will simply provide them as working copies for the Court.

Declaration of Jeffery Kaseburg  
(DCLR) - Page 1 of 6  
WPF DRPSCU 01.0100 (6/2006)

TUELL & YOUNG  
A Professional Services Corporation  
ATTORNEYS AT LAW  
1457 SOUTH UNION AVE.  
TACOMA, WA 98405-1951  
PHONE 253-759-0070  
FAX 253-759-0310

ORIGINAL

1  
2 Given the terms of our prenuptial agreement, and the prior orders entered by the  
3 Court, most of Gwen's motion is not applicable. She has already agreed that she is not  
4 entitled to maintenance. We have already agreed to each be responsible for our own  
5 attorney's fees and costs.

6 It is true that depositions were conducted of the attorneys that represented Gwen  
7 and me at the time of the execution of our prenuptial agreement. Her attorney, Roy Lee III,  
8 confirmed through questioning that he painstakingly went over every detail with her before  
9 allowing her to sign the document, that she understood the legal ramifications of signing the  
10 document, and voluntarily and intelligently signed the document. Relevant excerpts provide:

11 Katy Banahan: What information, if any, did you get from Gwen Kaseburg  
12 Bowman, as she was then, what information did you get from her that played  
13 a role in your advice about the impact of this agreement?

14 Roy Lee III: Well, when we went through the agreement—and one of the  
15 reasons I initialed each right-hand corner is that I went painstakingly through  
16 every paragraph, and at the end of the page I wanted to make sure that she  
17 understood what was going on and I asked. I would explain the pros and cons  
18 of each sentence—or each paragraph, and I wanted to make sure she  
19 understood what I was saying.

20 So after we went through each page, then I would initial that page, because I  
21 wanted to make sure that I went through and did the pros and cons. I wanted  
22 to make certain that she knew that she was giving away substantial rights in  
23 the event that the marriage was to be terminated. She acknowledged that she  
24 understood those rights at that time.

25 Q. (By Ms. Banahan): What rights did you bring to her attention?

A. The document speaks for itself. I basically said, "These are things that will  
happen to you or not happen to you if you sign this agreement, whereas if  
you have no prenuptial agreement you have a different set of rights under the  
laws of the state."

Q. Okay. What are the—were there any questions that you asked her that  
allowed you to advise her about what would happen, likely happen, in the  
event of not having an agreement?

A. Yes.

1 Q. What questions did you ask her?

2 A. Well, you know, we talked about children, we talked about existing jobs,  
3 we talked about housing, current finances, how financing is viewed in the  
4 future. That you're basically giving up your rights under the community  
property laws of the state.

5 Q. Let's stop there. What rights did you specifically bring to her attention  
6 about giving up entitlements under the community property laws of the state?

7 A. Communal earnings, which I think is an important thing. Housing.

8 Q. What housing did you believe she was waiving?

9 A. Well, it's not that housing that she would be waiving, it's that if you had  
10 housing and if she and Jeff were living together and they commingled their  
funds, then she would have different rights towards housing.

11 Q. So you were advising her about rights that she might acquire as a spouse  
12 going forward in the absence of an agreement.

13 A. Correct.

14 ...

15 Q. (By Ms. Young) Did Gwen have any objections to signing this prenuptial  
16 agreement?

17 A. No.

18 Q. Do you recall if she made any suggested changes to the prenuptial  
19 agreement or if the edits were all your idea?

20 A. They were all my idea.

21 Lee Dep. at 19-21, 34.

22 *Aside from our prenuptial agreement Gwen has also not provided proof of a need for*  
23 *spousal maintenance or attorney's fees. In her declaration filed April 27, 2009, she made no*  
24 *mention of the job she had working for a restaurant down the street from my restaurant. She*  
25 *failed to disclose her wages or even her employment. In her most recent declaration she*  
*states that she was laid off sometime in May 2009. She states that she has been*  
*unemployed ever since. She has not provided an explanation as to why she is unable to*  
*obtain employment, or if she has even sought employment. She has not provided any*

Declaration of Jeffery Kaseburg  
(DCLR) - Page 3 of 6  
WPF DRPSCU 01.0100 (6/2006)

**TUELL & YOUNG**  
*A Professional Services Corporation*  
ATTORNEYS AT LAW  
1457 SOUTH UNION AVE.  
TACOMA, WA 98405-1951  
PHONE 253-759-0070  
FAX 253-759-0310

1  
2 information about her unemployment benefits, if any. She states that she is capable of  
3 bookkeeping and asserts that the diner became successful due in large part to her efforts,  
4 which if true, means she is able and capable of obtaining employment.

5 She is living with her boyfriend and sisters, yet she fails to disclose their incomes or  
6 how much of the expenses included in her financial declaration are actually paid by her  
7 boyfriend and/or sisters. She also omitted this information, about her boyfriend, in her  
8 declaration filed April 27, 2009. She fails to disclose that she has the money to take an  
9 extended vacation to Ecuador with her live-in boyfriend. She also fails to adequately explain  
10 how she has managed to support herself from October 2008, until now, all without the  
benefit of any spousal maintenance.

11 In addition to the terms of our prenuptial agreement, I do not have an ability to pay  
12 Gwen's attorneys' fees or maintenance. My financial declaration and sealed financial source  
13 documents filed herewith demonstrate this fact. My income is comprised of a monthly  
14 advance towards repayment of capital—I receive no regular salary. From January through  
15 November 20<sup>th</sup> of this year I have \$12,200.14 in net income from which to pay myself a  
16 monthly advance. This equates to an approximate average of \$1,220.01 per month—a  
17 substantial decrease from my prior declaration as the economy has greatly and negatively  
18 impacted my business. I do not pay taxes monthly on this amount, rather at years' end. My  
19 expenses exceed my income each month, I am using my construction loan for this  
20 shortage, and I have had to borrow money from my parents to pay my own attorney.

21 Although Mad Dogs Diner is my separate property, I have filed under seal my  
22 Balance sheet as of November 20<sup>th</sup>. I have also filed a business valuation prepared by  
Steven J. Kessler which states that my diner is worth only \$100,000.

23 I ask the Court to deny Gwen's request for both maintenance and attorney's fees as  
24 she cannot demonstrate a need, I do not have an ability to pay, and we have a valid  
25 prenuptial agreement.

As far as Gwen's other miscellaneous charges against me:

We entered an agreed order regarding the Saab on October 28, 2009. I believe this is no longer an issue.

Regarding the attorney's fees, Gwen asserts that my September 15, 2009 motion was unnecessary and frivolous, but what Gwen fails to disclose is that she was not only not making the payments, or paying the insurance, but she was allowing other individuals, which were not known to me, drive a community vehicle that we were jointly liable for.

The Court ordered that I may obtain the Saab "forthwith" due to Gwen's actions and give her another vehicle that was paid for, or Gwen could keep the Saab and I could choose to bring current the insurance and car payment. The Court further ordered that Gwen was restrained from allowing anyone other than a registered or legal owner from driving any of our community property vehicles. The court made the finding that it was not appropriate to allow someone not known to me to drive any of the community vehicles. Thus, my motion was not "unnecessary" or "frivolous." Gwen did not ask for attorney's fees at that time and should not now be permitted to make that request as she did not properly preserve the issue.

Regarding insurance policies, Gwen raised this issue in her April 27, 2009 motion and declaration. In response to that motion I told the Court that I had removed Gwen from the business health insurance as she was no longer an employee and she is not an owner. Why she is asking the Court to "preserve" the original order is beyond me. It is a court order. I have not made a motion to modify the order. Gwen asserts that I have taken action since the order was entered to remove her, which is not true. She has provided no proof of her allegation other than her own self serving declaration.

Throughout our marriage I have abided by the terms of our prenuptial agreement and have kept my separate property separate. This is the very reason that Gwen and I entered into a prenuptial agreement, because we BOTH agreed to keep our property

1  
2 separate. Yet, Gwen asserts in her declaration that I told her Washington is a community  
3 property state, and what was mine was hers. Gwen's feigned ignorance regarding the legal  
4 status of our property is in direct contradiction to her own attorney's statements, under oath,  
5 during a deposition on September 1, 2009.

6 I have sold prior homes and bought the land on which my current home sits in the  
7 midst of construction. I have bought and sold planes as well as other items. I have every  
8 right to take these actions as I am buying and selling my separate property.

9 I have excluded Gwen from my business and my business records as they are my  
10 separate property and she is not entitled to access.

11 I do not object to the requested restraining order preventing me from disposing of  
12 any business records as it would be a poor move for my business.

13 I do object to being ordered to provide Gwen unfettered access to my business  
14 records.

15 I declare under penalty of perjury under the laws of the State of Washington the  
16 foregoing is true and correct.

17 Executed at Buckley, Wa on this 21<sup>st</sup> day of November, 2009.  
18 (City and State)

19   
20 JEFFREY KASEBURG  
21  
22  
23  
24  
25

Declaration of Jeffrey Kaseburg  
(DCLR) - Page 8 of 6  
WPF DRPSCU 01.0100 (6/2006)

TUELL & YOUNG  
A Professional Services Corporation  
ATTORNEYS AT LAW  
1457 SOUTH UNION AVE.  
TACOMA, WA 98405-1951  
PHONE 253-759-0070  
FAX 253-759-0310

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE

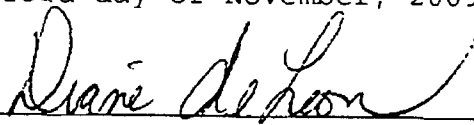
3 In Re the Marriage of: )  
 4 GWENDOLYN KASEBURG, ) No. 00-3-00970-3  
 5 )  
 6 )  
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 26 )

I, DIANE deLEON, declare as follows:

The attached Declaration of Jeffrey Kaseburg was sent via facsimile, from Jeffrey Kaseburg, who did confirm that it consisted of six pages, and did sign and send same via facsimile, and said signature is legible and complete.

I declare under penalty of perjury and the laws of the State of Washington, that the foregoing is true and correct.

DATED at Tacoma, WA, this 23rd day of November, 2009.

  
 Diane deLeon

DECLARATION OF FAX SIGNATURE

TUELL & YOUNG  
 A Professional Services Corporation  
 ATTORNEYS AT LAW  
 1457 SOUTH UNION AVE.  
 TACOMA, WA 98405-1951  
 PHONE 253-759-0070  
 FAX 253-759-0310

# **APPENDIX I**



09-3-01481-6 32170512 DCLR 06-02-09

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUN -1 2009 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

**Superior Court of Washington  
County of PIERCE**

In re the Marriage of:

GWENDOLYN KASEBURG,

No. 09-3-01481-6

Petitioner,

DECLARATION OF  
JEFFREY KASEBURG

and

JEFFREY KASEBURG,

(DCLR)

Respondent.

I, JEFFREY KASEBURG, declare:

I am competent to testify to the matters contained herein and make this Declaration based upon personal knowledge.

I make this declaration in response to my wife, Gwen's, motion and declaration for temporary orders.

Gwen and I married on August 18, 2000. We separated on October 18, 2008. We have no children of our marriage.

Prior to our marriage Gwen and I executed a prenuptial agreement. The original of which has been recorded with the Pierce County Auditor along with declarations from our attorneys, Roy G. Brewer and Roy Lee III. A certified copy of the prenuptial agreement and the declarations is attached hereto as Exhibit A.

Declaration of Jeffery Kaseburg  
(DCLR) - Page 1 of 3  
WPF DRPCU 01.0100 (6/2006)

**TUELL & YOUNG**  
A Professional Services Corporation  
ATTORNEYS AT LAW  
1457 SOUTH UNION AVE.  
TACOMA, WA 98405-1951  
PHONE 253-759-0070  
FAX 253-759-0310

I - 1

1  
2 Given the terms of our prenuptial agreement, most of Gwen's motion is not  
3 applicable. She has already agreed that the Diner is mine. She has already agreed that my  
4 current home and prior home were mine. She has already agreed that she is not entitled to  
5 maintenance. We have already agreed to each be responsible for our own attorney's fees  
6 and costs.

7 Aside from our prenuptial agreement, Gwen has also not provided proof of a need  
8 for spousal maintenance or attorney's fees. She has a job working for a restaurant down  
9 the street from my restaurant. She fails to disclose her wages or even her employment.  
10 She is living with her boyfriend, yet she fails to disclose his income or how much of the  
11 expenses included in her financial declaration are actually his. She fails to disclose that she  
12 has the money to take an extended vacation to Ecuador with her live-in boyfriend. She also  
13 fails to mention how she has managed to support herself from October until now, all without  
14 the benefit of any spousal maintenance.

15 In addition to the terms of our prenuptial agreement, I do not have an ability to pay  
16 Gwen's attorneys' fees or maintenance. My financial declaration and sealed financial  
17 source documents filed herewith demonstrate this fact. My income is comprised of a  
18 monthly advance towards repayment of capital—I receive no regular salary. From January  
19 through April of this year, this has averaged \$4,805.00 per month. I do not pay taxes  
20 monthly on this amount, rather at years' end. My expenses exceed my income each month,  
21 I am using my construction loan for this shortage, and I have had to borrow money from my  
22 parents to pay my own attorney.

23 Although Mad Dogs Diner is my separate property, I have filed under seal my Profit  
24 and Loss statement for January through April 2009 and my Balance sheet as of April 30,  
25 2009.

I ask the Court to deny Gwen's request for both maintenance and attorney's fees.

1  
2 As far as Gwen's other miscellaneous charges against me:

3 Throughout our marriage I have abided by the terms of our prenuptial agreement  
4 and have kept my separate property separate. This is the very reason that Gwen and I  
5 entered into a prenuptial agreement, because we BOTH agreed to keep our property  
6 separate. I have sold prior homes and bought the land on which my current home sits in  
7 the midst of construction. I have bought and sold planes as well as other items. I have  
8 every right to take these actions as I am buying and selling my separate property.

9 I have excluded Gwen from my business and my business records as they are my  
10 separate property and she is not entitled to access.

11 I have removed Gwen from the business health insurance as she is no longer an  
12 employee and she is not an owner.

13 I did not have an affair with an employee or anyone.

14 I do not object to the requested restraining order preventing me from disposing of  
15 any business records as it would be a poor move for my business.

16 I do object to being ordered to provide Gwen unfettered access to my business  
17 records.

18 I declare under penalty of perjury under the laws of the State of Washington the  
19 foregoing is true and correct.

20 Executed at Tacoma, WA on this 27<sup>th</sup> day of May, 2009.  
21 (City and State)

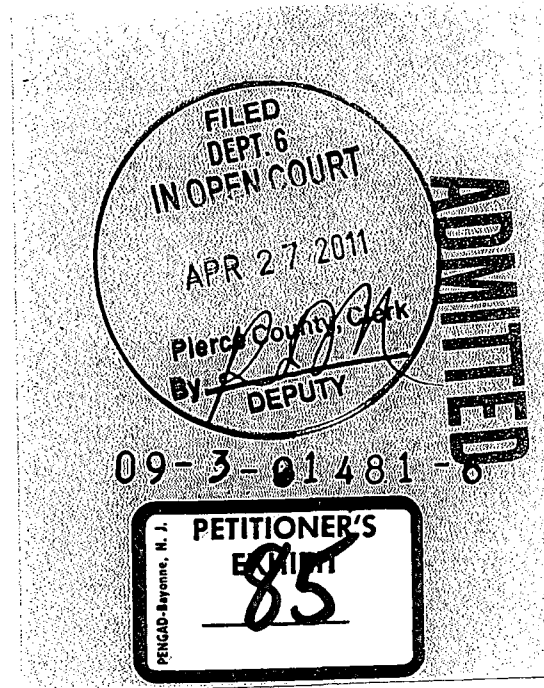
22  
23  
24  
25  
  
JEFFREY KASEBURG

## **APPENDIX J**

<b>Form 4666</b> <small>(Rev. February 1994)</small>		Department of the Treasury - Internal Revenue Service <b>Summary of Employment Tax Examination</b>			Page 1 of 1	
Name and Address of Employer  GEF Enterprises LLC  21185 Highway 410E Bonney Lake, WA 98300			Employer Identification Number <div style="background-color: black; width: 100px; height: 1.2em; margin: 2px 0;"></div>		Date of Report 01/22/10	
			Type of Report Delinquent tax      Increase (Decrease) in Tax <input type="checkbox"/> (Return not filed) <input type="checkbox"/> (Return filed)			
			<input type="checkbox"/> Agreed (This report is subject to Review and you will be notified by the Area Director when it is accepted)			
			<input type="checkbox"/> Unagreed			
Following is a summary of the results of my examination of your returns as shown on the attached pages of this report.						
a	b	Tax and Penalties				f
Calendar Year	Return Form Number	c Delinquent Tax, Increase (Decrease) in Tax	d Penalty		e Total	Page number of Report
			Code Section	Amount		
2005	941	\$56,243.04	6651 6656	32,199.15	88,442.19	1
2005	940	\$1,096.59	6651 6656	619.57	1,716.16	2
<b>Total</b>		<b>\$57,339.63</b>		<b>32,818.72</b>	<b>\$90,158.35</b>	

## Other Information

This does not constitute an Income Tax Examination



Examining Officer's Signature

Peter J Adams

Cat. No. 41874S

District

Reno

Form 4666 (Rev. 02-1994)

J-1

## **APPENDIX K**

## Internal Revenue Service

200 S. Virginia St.#105  
Box 5165 RN  
Reno, NV 89501

Date: 1/4/2010

GEF Enterprises LLC  
Mad Dogs Family Diner  
c/o Gwen Kaseburg  
20825 Hwy 410 E  
Bonney Lake, WA 98391

## Department of the Treasury

Taxpayer Name:

GEF Enterprises LLC

Employer Identification Number:

Tax Form:

940, 941

Tax Period(s):

2005

Person to Contact:

Peter J Adams

IRS Employee Identification Number:

09-48902

Contact Telephone Number:

775 325 9283

Dear Taxpayer:

Your employment tax return for the year(s) or period(s) shown above has been selected for examination. I have scheduled the following appointment to meet with you regarding this examination.

Place: By phone. Please provide a convenient phone number at which I can reach you.

Date: Monday, January 18<sup>th</sup>, 2010

Time: 8:30 am

### What You Need To Do

Please call on or before 1/15/2010 to confirm this appointment. You can reach me at the number shown above between the hours of 8:00 am to 4:30 pm, Monday through Friday.

If this date and time is not convenient, please give me a call so that we can schedule a more convenient time.

To reduce the amount of time spent on this examination, please have the items listed on the attached Form 4564, *Information Document Request*, at our scheduled appointment. During our telephone conversation, we will talk about these items so if you have questions, feel free to ask.

### Someone May Represent You

You may have someone represent you during any part of this examination. If you want someone to represent you, please provide me with a completed Form 2848, *Power of Attorney and Declaration of Representative*, or Form 8821, *Tax Information Authorization*, at our first meeting or mail it to me prior to our first appointment. You can get these forms from our office, from our web site at [www.irs.gov](http://www.irs.gov), or by calling 1-800-829-3676. If you decide you want to have someone represent you after the examination has started, we will delay further examination activity until you are able to secure representation.

Form 4564	Department of the Treasury Internal Revenue Service Information Document Request	Request Number 2
To: (Name of Taxpayer and Company, Division or Branch) GEF Enterprises LLC Mad Dogs Family Diner c/o Gwen Kaseburg 21185 Hwy 410 E Bonney Lake, WA 98390		Subject: Form 940, 941
		Submitted to: Gwen Kaseburg
		Dates of Previous Requests: 11/16/2009

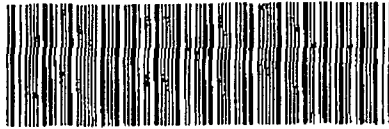
**Description of Documents Requested:**

Please have available for inspection the following books and records for the quarters: March 31, 2005, June 30, 2005, September 30, 2005, and December 31, 2005.

- 1) Payroll records and/or journals for 2005.
- 2) General journals, ledgers, summaries for 2005.
- 3) Copies of Forms W-2, W-3, W-4, W-9, 1096, and 1099 for 2005
- 4) Copies of Forms W-2, W-3, W-4, W-9, 1096, and 1099 for 2006. (For inspection only).
- 5) Copy of partnership agreement.
- 6) Copy of related partnership return 1065 for 2005. (For inspection only)
- 7) Copy of related partnership return 1065 for 2006. (For inspection only).
- 8) Copy of related partnership return 1065 for 2007. (For inspection only).
- 9) Copies of owners' individual returns - Form 1040 return and related Schedules for 2005. (For inspection only)
- 10) Copies of previous correspondence from the IRS.
- 11) A copy of the findings of any prior IRS and/or State audit.
- 12) Listing of all company owned vehicles and their drivers.
- 13) Description of benefits paid to workers, including, but not limited to, records of employee expense reimbursements.

Information due by	<u>1/15/2010</u>	At Next Appointment	<input type="checkbox"/>	MAIL IN	<input checked="" type="checkbox"/>
Name and Title of Requestor Peter J Adams Revenue Agent		Employee ID: [REDACTED]		Date: 1/4/2010	
Office Location: IRS 200 S. Virginia St.#105 MS 5165 RN Reno, NV 89501		Phone: 775 325 9283		Page 1	
		Fax: 775 325 9387			

## **APPENDIX L**



09-3-01481-6 36310277 EXRV 04-29-11

## IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

GWENDOLYN KASEBURG,  
Petitioner(s)

vs

JEFFREY KASEBURG,  
Respondent(s)

Cause No 09-3-01481-6

## EXHIBIT RECORD

FILED  
DEPT. 6  
IN OPEN COURT  
APR 28 2011Pierce County Clerk  
By *[Signature]*  
DEPUTY

4-28-11

*all per [Signature]*

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	1	Prenuptial Agreement 18 August 2000	X	N	Admitted	04-21-11	
P	2	Prenuptial Agreement	X	N	Admitted	04-21-11	
P	3	Promissory Note July 31, 1993	X	N	Admitted	04-21-11	
P	4	Promissory Note May 27, 1995	X	N	Admitted	04-21-11	
P	5	Promissory Note July 15, 1996	X	N	Admitted	04-21-11	
P	6	Promissory Note March 10, 1999	X	N	Admitted	04-21-11	
P	7	Promissory Note February 25, 2000	X	N	Admitted	04-21-11	
P	8	Promissory Note November 24, 2002	X	N	Admitted	04-21-11	
P	9	Promissory Note June 5, 2004	X	N	Admitted	04-21-11	
P	10	1040 2003	X	N	Admitted	04-21-11	
P	11	1040 2004	X	N	Admitted	04-21-11	
P	12	1040 2005	X	N	Admitted	04-21-11	

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	13	1040 2006	X	N	Admitted	04-21-11	
P	14	1040 2007	X	N	Admitted	04-21-11	
P	15	1120 2006	X	N	Admitted	04-21-11	
P	16	1120S 2207	X	N	Admitted	04-21-11	
P	17	Respondent's Your Social Security Statement	X	N	Admitted	04-21-11	
P	18	Source of Funds and Certification and various documents	X	N	Admitted	04-21-11	
P	19	January 2008 through October 2008 Head and Plate Monthly Averages and other documents	X	N	Admitted	04-27-11	
P	20	Pierce County Tax Statement 2005	X	N	Admitted	04-21-11	
P	21	Deed of Trust	X	N	Admitted	04-21-11	
P	22	Deed of Trust	X	N	Admitted	04-21-11	
P	23	Deed of Trust	X	N	Admitted	04-21-11	
R	24	Quit Claim Deed	X	N	Admitted	04-21-11	
R	25	Mad Dogs Cafe Business Evaluation	X	N	Admitted	04-21-11	
R	26	Note for Burnett Property 10-17-2007	X	N	Admitted	04-21-11	
R	27	Loan Application	X	N	Admitted	04-21-11	
R	28	Final Settlement Statement	X	N	Admitted	04-21-11	
R	29	Note	X	N	Admitted	04-21-11	
R	30	Check, copy of	X	N	Admitted	04-21-11	
R	31	Check, copy of	X	N	Admitted	04-21-11	
R	32	Check, copy of 02-11-11	X	N	Admitted	04-21-11	
R	33	Sale and Purchase Agreement	X	N	Admitted	04-21-11	
R	34	Articles of Incorporation of Mad Dogs Cafe	X	N	Admitted	04-21-11	
R	35	Consent to Purchase	X	N	Admitted	04-21-11	
R	36	Final Closing Statement	X	N	Admitted	04-21-11	
R	37	Lease	X	N	Admitted	04-21-11	
R	38	Mad Dogs Diner and Pub January though December 2010	X	N	Admitted	04-26-11	

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
R	39	Mad Dogs Diner and Pub Profit and Loss January 1 through April 19, 2011	X	N	Admitted	04-26-11	
R	40	Mad Dogs Diner and Pub Profit & Loss January through December 2006	X	N	Admitted	04-26-11	
R	41	Mad Dogs Diner and Pub Profit & Loss 2007	X	N	Admitted	04-26-11	
R	42	Mad Dogs Diner and Pub Profit & Loss 2008	X	N	Admitted	04-26-11	
R	43	Mad Dogs Diner and Pub Profit & Loss 2009	X	N	Admitted	04-26-11	
R	44	Mad Dogs Diner and Pub Balance Sheet December 31, 2010	X	N	Admitted	04-26-11	
R	45	Balance Sheet 2011	X	N	Admitted	04-26-11	
R	46	2008 1120S	X	N	Admitted	04-26-11	
R	47	2009n 1120S	X	N	Admitted	04-26-11	
R	48	2009 Value For taxes	X	N	Admitted	04-26-11	
R	49	Columbia Bank Statement	X	N	Admitted	04-26-11	
R	50	Retail Lease Agreement of Bonney Lake Village	X	N	Admitted	04-26-11	
R	51	Tax Statement 2000	X	N	Admitted	04-26-11	
R	52	Deed of Trust 2003	X	N	Admitted	04-26-11	
R	53	Funds Transfer Notification	X	N	Admitted	04-26-11	
R	54	Vacant Land Description	X	N	Admitted	04-26-11	
R	55	Statutory Warranty Deed	X	N	Admitted	04-26-11	
R	56	Application Maintenance document	X	N	Admitted	04-26-11	
R	57	Building (Residential) Permit 02-13-2007	X	N	Admitted	04-26-11	
R	58	Declaration of Cancellation of Reconveyance and Restatement of Deed of Trust	X	N	Admitted	04-26-11	
R	59	Addendum to Note	X	N	Admitted	04-26-11	
R	60	Chicago Title Insurance Company Final Settlement Statement	X	N	Admitted	04-26-11	
R	61	Escrow Receipt and Disbursement Authorization	X	N	Admitted	04-26-11	
R	62	Chicago Title Document	X	N	Admitted	04-26-11	
R	63	Columbia Bank Statement	X	N	Admitted	04-26-11	

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
R	64	Pierce County Assessor-Treasurer Parcel Summary	X	N	Admitted	04-26-11	
R	65	Real Property Value Change Notice	X	N	Admitted	04-26-11	
R	66	1040 2008	X	N	Admitted	04-26-11	
R	67	W-2 2009	X	N	Admitted	04-26-11	
R	68	W-2 2010	X	N	Admitted	04-26-11	
R	69	Your Social Security Statement for respondent dated July 29, 2010	X	N	Admitted	04-26-11	
R	70	Last Will and Testament of Jeffrey Brock Kaseburg	X	N	Admitted	04-26-11	
R	71	Alaska Federal Credit Union Statement of Account	X	N	Admitted	04-26-11	
R	72	Columbia Bank Statement of Account	X	N	Admitted	04-26-11	
R	73	US Corporation Income Tax Returns	X	N	Admitted	04-26-11	
P	74	Declaration of Roy G Brewer Regarding Prenuptial Agreement	X	N	Admitted	04-27-11	
P	75	Letter 10-25-2000	X	N	Admitted	04-27-11	
P	76	Declaration of Roy Lee III	X	N	Admitted	04-27-11	
P	77	Declaration of Jeffrey Kaseburg	X	N	Admitted	04-27-11	
P	78	Declaration of Jeffrey Kaseburg	X	N	Admitted	04-27-11	
P	79	J & S	X	N	Admitted	04-27-11	
P	80	J & S	X	N	Admitted	04-27-11	
P	81	Statement of Accounts June 13, 2006 Columbia Bank					
P	82	Summary of Jeff Kaseburg's Bank Statements					
P	83	Statement of Account Columbia Bank	X	N	Admitted	04-27-11	
P	84	Photos	X	N	Admitted	04-27-11	
P	85	IRS Notice	X	N	Admitted	04-27-11	
P	86	Financial Declaration Respondent 11-23-2009	X	N	Admitted	04-27-11	
P	87	Financial Declaration Respondent 06-01-2009	X	N	Admitted	04-27-11	
P	88	Toyota of Puyallup Financial Documents	X	N	Admitted	04-27-11	

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
R	89	Cheques, copy of	X	N	Admitted	04-27-11	
R	90	Summary of Payments on Promissory Note	X	N	Admitted	04-27-11	
R	91	Loans from Parents Summation	X	N	Admitted	04-27-11	
P	92	Promissory Note	X	N	Admitted	04-27-11	
P	93	Declaration of Karl Kaseburg re Summary Judgment	X	N	Admitted	04-27-11	
P	94	Limited Liability Company Information Document	X	N	Admitted	04-27-11	

## **APPENDIX M**



09-3-01481-6 36310284 CTD 04-29-11

## IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

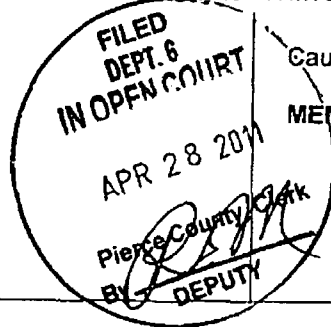
GWENDOLYN KASEBURG,

Petitioner,

vs

JEFFREY KASEBURG,

Respondent



Cause No 09-3-01481-6

## MEMORANDUM DECISION

This matter having come on regularly for trial, the Court now makes the following Memorandum Decision

The first issue is the validity of the parties' Prenuptial Agreement (PA) which they signed on their wedding day. The Court concludes that the PA is not valid for the following reasons: 1) The PA does not make fair provision for the wife since she receives no interest in any assets of the husband and receives no support from him unless there is a child which is unlikely at her age. 2) The PA does not fully disclose assets and liabilities because it fails to disclose any of the approximately \$692,000 in promissory notes he owed his parents. 3) The PA does not contain balance sheets. 4) At the most the wife had 8 days to review the PA prepared by the husband's attorney and then referred to his friend who had little experience in this area of the law to advise her properly. She did not have independent advice nor full knowledge of her rights.

The second issue is whether the parties had a meretricious relationship from 1993 to the date of their marriage in August of 2000. The Court concludes that they did have a meretricious relationship for the following reasons: 1) They resided together first in the husband's condo and then on the properties he bought and built homes on for seven years except for a six month separation. 2) They had an intimate sexual relationship over the seven years. 3) The wife kept contact with the husband while he was incarcerated for felony drug possession early in their relationship and provided nursing services for him.

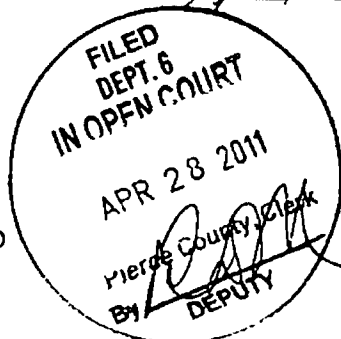
1 when he fell and broke both his arms sometime thereafter 4) The wife managed the parties' restaurant  
 2 business twelve hours a day while the husband built first the Vandermark home then the Burnett home  
 3 5) The wife paid monthly household expenses including mortgage payments from the restaurant  
 4 business 6) The wife also worked to remodel the condo and bought furnishings for it and helped in the  
 5 decorating of both homes

6 The third issue is the value of the properties The Court finds that the value of the restaurant is \$100,000  
 7 and the Burnet home and land with airfield is worth \$700,000 less \$380,000 mortgage

8 The fourth issue is what would be a fair and equitable division of the property The Court concludes that  
 9 the husband should be awarded the restaurant business and that the wife should be awarded the Burnet  
 10 home and property subject to the mortgage The Court finds that the husband sold the Vandermark  
 11 property in 2005 for a net of \$813,000 and kept most of the proceeds except for \$350,000 which he paid  
 12 to buy the Burnet land

13 The Court requests that petitioner's counsel prepare the appropriate findings of fact, conclusions of law  
 14 and decree, supplemented as needed, for presentation to the Court

17 DATED this 28 day of April, 20 11



18 [Signature]  
 19 JUDGE ROSANNE BUCKNER

20 FAXED THIS DAY TO

21 STEPHAN DWIGHT DOWNING  
 22 Attorney for Plaintiff/Petitioner  
 23 WSBA# 12314

24 STEPHAN WILLIAM FISHER  
 25 Attorney for Defendant/Respondent  
 WSBA#

By Roger McLennan, Judicial Assistant

[Signature: Roger P. McLennan]

## **APPENDIX N**



09-3-01481-6

36353546

MT

05-06-11

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. MAY 06 2011 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOOK, County Clerk  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE

In re the Marriage of:

GWENDOLYN KASEBURG,

Petitioner,

And

JEFFREY KASEBURG,

Respondent

NO. 09-3-01481-6

POST TRIAL MOTION

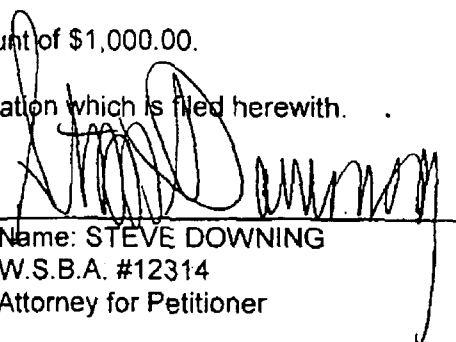
I. MOTION

GWENDOLYN KASEBURG moves the court for an order:

- 1) For the release of \$20,000.00 taken by the Pierce County Sheriff's Department at the time of arrest of Mr. Kaseburg on or about April 29, 2011.
- 2) In the alternative, a judgment against Jeffrey Kaseburg in the amount of \$20,000.00.
- 3) For attorney fees in the amount of \$1,000.00.

This motion is based upon the declaration which is filed herewith.

Dated: 5-5-11

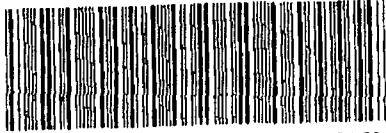
  
Name: STEVE DOWNING  
W.S.B.A. #12314  
Attorney for Petitioner

1 I declare under penalty of perjury under the laws of the state of Washington that the  
2 foregoing is true and correct.

3 Signed at Tacoma, Washington, on this 5<sup>th</sup> day of May, 2011.

4   
5 GWENDOLYN KASEBURG  
6 Declarant/Petitioner  
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## **APPENDIX O**



09-3-01481-6 36310262 FNDCLR 04-29-11

Superior Court of Washington  
County of PIERCE

In re:

GWENDOLYN KASEBURG

No. 09-3-01481-6

FILED  
DEPT. 6  
IN OPEN COURT

Petitioner,

Financial Declaration

APR 21 2011

And

☐ Petitioner  
☒ Respondent  
(FNDCLR)

JEFFREY KASEBURG

Respondent.

Pierce County, Clerk  
By *[Signature]*  
DEPUTY

Name Jeffrey Kaseburg

Date of Birth 11/25/1966

## I. Summary of Basic Information

Declarant's Total Monthly Net Income (from § 3 3 below)	\$1,220 00
Declarant's Total Monthly Household Expenses (from § 5 9 below)	\$5,417 00
Declarant's Total Monthly Debt Expenses (from § 5 11 below)	\$432 96
Declarant's Total Monthly Expenses (from § 5 12 below)	\$5,849 96
Estimate of the other party's gross monthly income (from § 3 1g below)	<input type="checkbox"/> - <input checked="" type="checkbox"/> Unknown

## II. Personal Information

- 2 1 Occupation Self Mad Dogs Diner
- 2 2 The highest year of education completed 14
- 2 3 Are you presently employed? ☒ Yes ☐ No
- a If yes (1) Where do you work Employer's name and address must be listed on the  
Confidential Information Form.
- (2) When did you start work there? (month/year) Feb 1999
- b If no (1) When did you last work? (month/year)
- (2) What were your gross monthly earnings? -
- (3) Why are you presently unemployed?

Financial Declaration (FNDCLR) - Page 1 of 6  
WPF DRPSCU 01 1550 (6/2006) - RCW 26 18 220 (1)

Stephen W. Fisher, PLLP  
6314 19th Street West, Ste #8  
Fircrest, WA 98466  
PH: 253-565-3900  
FAX: 253-565-3988

### III. Income Information

If child support is at issue, complete the Washington State Child Support Worksheet(s), skip Paragraphs 3 1 and 3 2 If maintenance, fees, costs or debts are at issue and child support is Not an issue this entire section should be completed (Estimate of other party's income information is optional )

#### 3 1 Gross Monthly Income

If you are paid on a weekly basis, multiply your weekly gross pay by 4 3 to determine your monthly wages and salaries If you are paid every two weeks, multiply your gross pay by 2 15 If you are paid twice monthly, multiply your gross pay by 2 If you are paid once a month, list that amount below

	Gwendolyn Kaseburg	Jeffrey Kaseburg
a Imputed Income	-	-
b Wages and Salaries	-	-
c Interest and Dividend Income	-	-
d Business Income	-	\$1,220 00
e Spousal Maintenance Received From	-	-
f Other Income	-	-
g <b>Total Gross Monthly Income</b> (add lines 3 1a through 3 1e)	-	<b>\$1,220.00</b>
h Actual Gross Income (Year-to-date)	-	-

#### 3 2 Monthly Deductions From Gross Income

	Gwendolyn Kaseburg	Jeffrey Kaseburg
a Income Taxes	-	-
b FICA/Self-employment Taxes	-	-
c State Industrial Insurance Deductions	-	-
d Mandatory Union/Professional Dues	-	-
e Pension Plan Payments	-	-
f Spousal Maintenance Paid	-	-
g Normal Business Expenses	-	-
h <b>Total Deductions from Gross Income</b> (add lines 3 2a through 3 2g)	-	-

#### 3 3 Monthly Net Income (Line 3 1f minus line 3 2h or line 3 from the Child Support Worksheet(s) )

- \$1,220.00

## 3 4 Miscellaneous Income

Gwendolyn Kaseburg Jeffrey Kaseburg

a Child support received from other relationships

Name

Name

b Other miscellaneous income

(list source and amounts)

Income of current spouse

Name

Name

Income of children

Name

Name

Income from assistance programs

Name

Name

Non-recurring income

Name

Name

Other Income

## c Total Miscellaneous Income

(add lines 3 4a through 3 4b)

## 3 5 Income of Other Adults in Household

Name

Name

3 6 If the income of either party is disputed, state monthly income you believe is correct and explain below

## IV. Available Assets

4 1 Cash on hand

4 2 On deposit in banks

4 3 Stocks and bonds

Cash value of life insurance

4 4 Other liquid assets

## V. Monthly Expense Information

Monthly expenses for myself and dependents are (Expenses should be calculated for the future, after separation, based on the anticipated residential schedule for the children )

## 5 1 Housing

Rent, 1st mortgage or contract payments

\$1,050.00

Installment payments for other mortgages or encumbrances

Taxes &amp; insurance (if not in monthly payment)

\$1,000.00

Total Housing

\$2,050.00

1	5 2	Utilities	
2		Heat (gas & oil)	\$100 00
3		Electricity	\$300 00
4		Water, sewer, garbage	-
5		Telephone	\$160 00
6		Cable	\$120 00
7		Other	-
8		<b>Total Utilities</b>	<b>\$680.00</b>
9	5 3	Food and Supplies	
10		Food for 1 persons	\$400 00
11		Supplies (paper, tobacco, pets)	\$150 00
12		Meals eaten out	\$250 00
13		Other	-
14		<b>Total Food Supplies</b>	<b>\$800.00</b>
15	5 4	Children	
16		Day Care/Babysitting	-
17		Clothing	-
18		Tuition (if any)	-
19		Other child-related expenses	-
20		<b>Total Expenses Children</b>	<b>-</b>
21	5 5	Transportation	
22		Vehicle payments or leases	\$740 00
23		Vehicle insurance & license	\$200 00
24		Vehicle gas, oil, ordinary maintenance	\$200 00
25		Parking	\$50 00
26		Other transportation expenses	-
27		<b>Total Transportation</b>	<b>\$1,190.00</b>
28	5 6	Health care (Omit if fully covered)	
29		Insurance	\$462 00
30		Uninsured dental, orthodontic, medical, eye care expenses	\$100 00
31		Other uninsured health expenses	-
32		<b>Total Health Care</b>	<b>\$562.00</b>
33	5 7	Personal Expenses (Not including children)	
34		Clothing	\$50 00
35		Hair care/personal care expenses	\$50 00
36		Clubs and recreation	\$35 00
37		Education	-
38		Books, newspapers, magazines, photos	-
39		Gifts	-
40		Other	-
41		<b>Total Personal Expenses</b>	<b>\$135.00</b>

## 5 8 Miscellaneous Expenses

Life insurance (if not deducted from income)

Other

Other

**Total Miscellaneous Expenses**

## 59 Total Household Expenses

**\$5,417.00**

(The total of Paragraphs 5.1 through 5.8)

**5 10 Installment Debts Included in Paragraphs 5 1 Through 5 8**

Creditor/Description of DebtBalanceMonth of Last Payment

Columbia Bank

\$387,500 00

11/2010

5 11 Other Debts and Monthly Expenses not Included in Paragraphs 5 1 - 5 8

Creditor/Description of DebtBalance

Month of  
Last Payment

Amount of  
Monthly Payment

Alaska CU/Ski Doo

\$6,443 30

Current

\$268 96

First Bank Visa/Credit Card

\$8,243 00

Current

\$164 00

Citicard/Credit Card

$$-0=$$

Current

-0-

1 Total Monthly Payments for Other Debts and Monthly Expenses \$432.96

2  
3 5 12 Total Expenses (Add Paragraphs 5 9 and 5 11) \$5,849.96

4 VI. Attorney Fees

5 6 1 Amount paid for attorney fees and costs to date \$25,212 80

6 6 2 The source of this money was Loan from parents

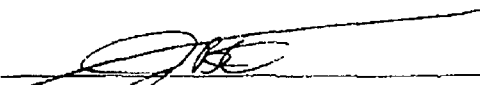
7 6 3 Fees and costs incurred to date \$25,212 80

8 6 4 Arrangements for attorney fees and costs are Pay as I am able

9 6 5 Other

10 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct

11 Signed at Fircrest [City] WA [State] on Dec. 6, 2010 [Date]

12  
13   
14 Jeffrey Kaseburg  
Signature of Declarant

15 The following financial records are being provided to the other party and filed separately with the court

16 Financial records pertaining to myself

17 ☐ Individual ☐ Partnership or Corporate Income Tax returns for  
the years including all W-2s and schedules,

18 ☐ Pay stubs for the dates of

19 ☐ Other

20 Do not attach these financial records to the financial declaration. These financial records should  
21 be served on the other party and filed with the court separately using the sealed financial source  
22 documents cover sheet (WPF DRPSCU 09.0220). If filed separately using the cover sheet, the  
records will be sealed to protect your privacy (although they will be available to all parties in the  
case, their attorneys, court personnel and certain state agencies and boards.) See GR 22 (c)(2).

## **APPENDIX P**



09-3-01481-6 36422354 DCLR 05-19-11

FILED  
IN COUNTY CLERK'S OFFICEA.M. MAY 18 2011 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

8	In re: the Marriage of:	)	NO. 09-3-01481-6
9	GWENDOLYN KASEBURG,	)	
10	Petitioner,	)	DECLARATION OF STEPHEN W.
11	and	)	FISHER IN RESPONSE TO
12	JEFFREY KASEBURG,	)	PETITIONER'S POST-TRIAL
13	Respondent.	)	MOTION AND RE: PRESENTATION
		)	OF FINAL PLEADINGS

STEPHEN W. FISHER declares and states as follows:

I am the attorney for the Respondent, and I make this Declaration in response to the Petitioner's post-trial Motion and relating to the presentation of the Findings of Fact and Conclusions of Law and Decree of Dissolution.

POST-TRIAL MOTION

The post-trial Motion is not well founded. First of all, the Superior Court Judge handling the alleged criminal matter must first determine the status of the funds. The allegations in the criminal case can only be determined through the criminal litigation process. Mr. Kaseburg has a valid concealed weapons permit, and the statements and allegations made in the Declaration for Determination of Probable Cause are not accurate. Again, those facts will only be determined through the criminal process.

DECLARATION OF STEPHEN W. FISHER - 1

**Original**

**STEPHEN W. FISHER**  
A Professional Limited Liability Partnership  
ATTORNEY AT LAW  
COLLEGE PARK PROFESSIONAL CENTER  
6314 19<sup>TH</sup> STREET WEST, SUITE 8  
FIRCREST, WASHINGTON 98466  
(253) 565-3900; FAX: (253) 565-3988

1 Of equal concern is that the search occurred the day after the Court issued  
 2 its written decision. If it is determined that the Petitioner had any knowledge of Mr.  
 3 Kaseburg's actions, she will not be entitled to any of the funds.

4 After the Criminal Court has made its determination, it would be necessary  
 5 to have a hearing, in the dissolution proceeding, to determine the nature of the  
 6 funds. In actuality, the funds were Mr. Kaseburg's separate savings, funds from the  
 7 sale of the dump truck and snowmobile and trailer, undeposited funds from the  
 8 restaurant and funds saved by Mr. Kaseburg's girlfriend. The parties have been  
 9 separated for over two and a half years, and there is no reason to assume that Mr.  
 10 Kaseburg above, and beyond the sale of his separate assets, would not have  
 11 accrued some savings during that period of time.

#### 12 FINAL PLEADINGS

13 Attached hereto, marked **Exhibits A and B**, respectively, and incorporated  
 14 herein by reference are Mr. Kaseburg's proposed Findings of Fact and Conclusions  
 15 of Law and Decree of Dissolution.

16 As this Court well knows, the trier of fact is required to identify all of the  
 17 assets of the parties. The trier of fact must then determine whether an asset is  
 18 community property or separate property. The trier of fact must also place a value  
 19 on each asset, based upon the testimony of the parties. Additionally, the Trial Court  
 20 must identify each obligation of the parties and again must make a determination  
 21 as to whether the obligation is a community liability or a separate liability.

22 The Findings of Fact proposed by the Respondent appropriately segregate  
 23 the community and separate assets. The proposed Findings of Fact also provide  
 24 the valuations of the assets, based upon the testimony of the parties. Additionally,  
 25 the Findings of Fact properly identify all of the obligations of the parties.  
 26

27 DECLARATION OF STEPHEN W. FISHER - 2

28 **STEPHEN W. FISHER**  
*A Professional Limited Liability Partnership*  
 ATTORNEY AT LAW  
 COLLEGE PARK PROFESSIONAL CENTER  
 6314 19<sup>TH</sup> STREET WEST, SUITE 8  
 FIRECREST, WASHINGTON 98466  
 (253) 565-3930; FAX: (253) 565-3988

1 In regard to the Burnett property, Mr. Kaseburg will need until June 30, 2011  
 2 to vacate the premises. At the time that he vacates the premises, Mr. Kaseburg  
 3 would propose leaving all of the appliances in the premises, except for an extra  
 4 refrigerator with the intent of leaving the Jenn-Air refrigerator in the kitchen. Based  
 5 upon the testimony presented at the time of trial, it is mandatory that the Court  
 6 make a finding that the real property is unfinished and that significant work is  
 7 needed to obtain final approval on the Pierce County Building Permits.

8 Additionally, as indicated at the time of trial, Mr. Kaseburg is the sole obligor  
 9 on the Promissory Note with Columbia State Bank, which was executed on October  
 10 16, 2007. The loan is a construction loan, and as indicated by Mr. Kaseburg,  
 11 Columbia State Bank is in the process of converting the construction loan to a  
 12 standard mortgage. I have been in contact with Columbia State Bank's counsel.  
 13 Columbia State Bank is extremely concerned about the fact that the real property  
 14 has been awarded to the Petitioner, but she is not a signatory on the Promissory  
 15 Note. As the Court is well aware, Columbia State Bank has the authority to  
 16 accelerate the Note, based upon a transfer of the interest in the real property.  
 17 Moreover, since Mr. Kaseburg is the only person obligated on the Note, it is  
 18 mandatory that the Petitioner refinance the real property within ninety days of the  
 19 date of the entry of the Decree of Dissolution. Since the real property has equity in  
 20 excess of \$312,000.00, Petitioner should have no difficulty in refinancing the real  
 21 property within the proposed time period. Unless the property is refinanced, Mr.  
 22 Kaseburg is placed in an untenable position of having to renegotiate the  
 23 construction loan with Columbia State Bank, when that should be the responsibility  
 24 of Ms. Kaseburg. Until the loan has been refinanced, Columbia State Bank can only  
 25 look to Mr. Kaseburg for payment on the entire loan balance.  
 26

27 DECLARATION OF STEPHEN W. FISHER - 3  
 28

**STEPHEN W. FISHER**  
*A Professional Limited Liability Partnership*  
 ATTORNEY AT LAW  
 COLLEGE PARK PROFESSIONAL CENTER  
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1 Mr. Kaseburg has prepaid real estate taxes through September, 2011, and  
2 he should be reimbursed the sum of \$2,100.00. He has also prepaid Homeowners  
3 Association dues of \$100.00, per month, through December 31, 2011. He should  
4 be reimbursed an additional sum of \$600.00.

5 I declare under penalty of perjury under the laws of the State of Washington  
6 that the foregoing is true and correct.

7 SIGNED AT Fircrest, Washington, this 18<sup>th</sup> day of May, 2011.

8  
9  
10 By:

  
11 STEPHEN W. FISHER, WSBA #7822  
12 Attorney for Respondent  
13  
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26  
27  
28

DECLARATION OF STEPHEN W. FISHER - 4

**STEPHEN W. FISHER**  
*A Professional Limited Liability Partnership*  
ATTORNEY AT LAW  
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## **APPENDIX Q**



09-3-01481-6 36310283 CME 04-28-11

# IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

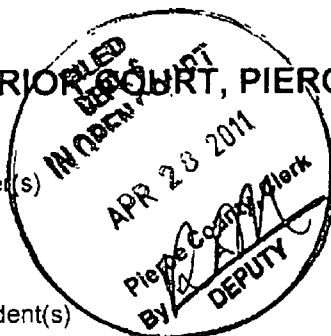
GWENDOLYN KASEBURG

Petitioner(s)

vs

JEFFREY KASEBURG

Respondent(s)



Cause Number 09-3-01481-6

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Judge/Commissioner ROSANNE BUCKNER

Court Reporter CHRISTIE JAMESON

Judicial Assistant/Clerk ROGER MCLENNAN

KASEBURG, GWENDOLYN

STEPHAN DWIGHT DOWNING

Attorney for Plaintiff/Petitioner

KASEBURG, JEFFREY

STEPHEN WILLIAM FISHER

Attorney for Respondent

Proceeding Set Trial

Proceeding Outcome Non-Jury Trial

Outcome Date 04/28/2011 14 31

Resolution Court Decision after NJ Trial

Clerk's Scomis Code: NJTRIAL

Proceeding Outcome code NJTRIAL

Resolution Outcome code CDAT

Amended Resolution code

# IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

GWENDOLYN KASEBURG

Cause Number. 09-3-01481-6

## MEMORANDUM OF JOURNAL ENTRY

vs

JEFFREY KASEBURG

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### MINUTES OF PROCEEDING

Judicial Assistant/Clerk ROGER MCLENNAN

Court Reporter CHRISTIE JAMESON

Start Date/Time: 04/21/11 9:46 AM

**April 21, 2011 09:46 AM** Court in session. Petitioner and respondent ready to proceed  
 Colloquy re scheduling issues, notebook, and number of witnesses

09:51 AM Opening statement by Mr Downing. 10.03 AM Opening statement by  
 Mr Fisher.

**PETITIONER'S CASE IN CHIEF** 10:22 AM Mr Downing calls **GWENDOLYN  
 KAY KASEBURG** who is sworn and testifies on direct examination. Petitioner's exhibits #1  
 through #9 marked during examination. 10.44 AM Morning recess

11.01 AM Court reconvenes Mr Downing continues with direct examination of  
 petitioner Petitioner's exhibits #10 through #16 marked during examination of witness  
 11:16 AM **Petitioner's exhibits #1 and #2** offered and admitted.

11 33 AM Petitioner's exhibits #15 and #16 offered 11.38 AM Petitioner's  
 exhibit #17 marked. 11.40 AM **Petitioner's exhibit #17** offered and admitted Colloquy  
 re social security number of the parties on exhibits 11:50 AM Petitioner's exhibit #18  
 marked. 11:52 AM Petitioner's exhibit #19 marked. 11.53 AM Mr Downing lays  
 foundation as to how the documents came into being 11.57 AM Noon recess

End Date/Time: 04/21/11 11:57 AM

 Judicial Assistant/Clerk ROGER MCLENNAN  
 Start Date/Time: 04/21/11 1:28 PM

Court Reporter CHRISTIE JAMESON

**April 21, 2011 01:28 PM** Court reconvenes Petitioner's exhibit #20 premarked.  
**Petitioner's exhibits #10 through #16** offered and admitted and **petitioner's exhibit #18**

JUDGE/COMMISSIONER ROSANNE BUCKNER Year 2011

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

GWENDOLYN KASEBURG

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offered and admitted.

01:38 PM Petitioner's exhibit #20 offered and admitted. 01:44 PM Petitioner's exhibits #21, #22, and #23 marked 01:48 PM Petitioner's exhibits #21, #22, and #23 offered and admitted.

01:50 PM Petitioner's exhibits #3, #4, #5, #6, #7, and #8 offered and admitted 01:51 PM Petitioner's exhibit #9 offered and admitted.

01:54 PM Cross examination. 02:15 PM Respondent's exhibit #24 marked, offered, and admitted. 02:21 PM Respondent's exhibit #25 marked, offered, and admitted. 02:45 PM Recess. 03:02 PM Court reconvenes Mr Fisher continues with cross examination of petitioner 03:04 PM Redirect examination

03:09 PM Recross examination 03:10 PM Respondent's exhibit #26 marked, offered, and admitted. Witness stands down Petitioner rests

RESPONDENT'S CASE IN CHIEF 03:14 PM Mr Fisher calls the respondent JEFFREY KASEBURG who is sworn and testifies on direct examination 03:32 PM Respondent's exhibit #27 marked, offered, and admitted. 03:33 PM Respondent's exhibit #28 marked, offered, and admitted. 03:35 PM Respondent's exhibit #29 marked, offered, and admitted

03:50 PM Respondent's exhibit #30, #31, and #32 marked, offered, and admitted 03:54 PM Respondent's exhibit #33 marked, offered, and admitted 03:57 PM Respondent's exhibits #34, #35, and #36 marked, offered, and admitted. 04:00 PM Respondent's exhibit #37 marked, offered, and admitted. 04:05 PM Court adjourns.

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

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MINUTES OF PROCEEDING

End Date/Time: 04/21/11 4:05 PM

Judicial Assistant/Clerk ROGER MCLENNAN  
Start Date/Time: 04/26/11 1:54 PM

Court Reporter CHRISTIE JAMESON

**April 26, 2011 01:54 PM SECOND DAY** Court reconvenes. Respondent's exhibits #38 through #55 premarked. Mr Fisher continues with direct examination of respondent. 02.00 PM Respondent's exhibit #40 offered and admitted. 02 02 PM Respondent's exhibits #41, #42, and #43 offered and admitted.

02.04 PM Respondent's exhibits #38 and #39 offered and admitted 02.11 PM Respondent's exhibits #44 and #45 offered and admitted. 02 12 PM Respondent's exhibits #46 and #47 offered and admitted.

Respondent's exhibits #56 through #72 marked during testimony. 02:17 PM Respondent's exhibit #48 offered and admitted. 02:20 PM Respondent's exhibit #49 offered and admitted. 02 25 PM Respondent's exhibit #50 offered and admitted.

02.27 PM Respondent's exhibit #51 offered and admitted. 02:29 PM Respondent's exhibit #52 offered and admitted. 02 31 PM Respondent's exhibit #53 offered and admitted. 02:45 PM Respondent's exhibit #54 offered and admitted 02:46 PM Respondent's exhibit #55 offered and admitted

02:48 PM Respondent's exhibits #56 and #57 offered and admitted. 02:49 PM Respondent's exhibit #58 offered and admitted. 02.50 PM Respondent's exhibit #59 offered and admitted. 02:53 PM Respondent's exhibit #60, #61, and #62 offered and admitted. 02:55 PM Respondent's exhibit #63 offered and admitted

JUDGE/COMMISSIONER ROSANNE BUCKNER Year 2011

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

GWENDOLYN KASEBURG

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02:58 PM Respondent's exhibits #64 and #65 offered and admitted. 03:03 PM Respondent's exhibit #66 and #67 offered and admitted. 03:03 PM Recess

03:21 PM Court reconvenes. Respondent's exhibit #73 premarked. 03:21 PM Respondent's exhibit #68 offered and admitted. 03:22 PM Respondent's exhibit #69 offered and admitted. 03:34 PM Respondent's exhibit #70 offered and admitted. 03:40 PM Respondent's exhibits #71 and #72 offered and admitted. 03:41 PM Respondent's exhibit #73 offered and admitted

03:42 PM Cross examination. Colloquy re exhibits with social security numbers and submission of redacted exhibits. 04:12 PM Colloquy re respondent's witnesses. 04:12 PM Court adjourns.

End Date/Time: 04/26/11 4:12 PM

Judicial Assistant/Clerk ROGER MCLENNAN  
Start Date/Time: 04/27/11 9:16 AM

Court Reporter CHRISTIE JAMESON

April 27, 2011 09:15 AM THIRD DAY Court in session. Interruptin the cross examination of the respondent, Mr Fisher calls ROY G BREWER who is sworn and testifies on direct examination. 09:35 AM Cross examination. 09:37 AM Petitioner's exhibit #74 marked. 10:07 AM Petitioner's exhibit #75 marked. 10:08 AM Petitioner's exhibits #74 and #75 offered and admitted. 10:10 AM Redirect examination. 10:12 AM Witness stands down and is excused. 10:12 AM Recess

End Date/Time: 04/27/11 10:12 AM

Judicial Assistant/Clerk ROGER MCLENNAN

Court Reporter CHRISTIE JAMESON

JUDGE/COMMISSIONER ROSANNE BUCKNER Year 2011

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

GWENDOLYN KASEBURG

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## MINUTES OF PROCEEDING

Start Date/Time: 04/27/11 10:43 AM

**April 27, 2011 10:43 AM** Court reconvenes Mr Fisher calls **ROY LEE III** who is sworn and testifies on direct examination 10:54 AM Cross examination. 10:56 AM Petitioner's exhibit #76 marked 11:06 AM No redirect examination Witness stands down and is excused.

11:08 AM **Petitioner's exhibit #76** offered and admitted. Respondent Jeffrey Kaseburg retakes the witness stand and Mr Downing resumes cross examination. 11:14 AM Petitioner's exhibit #77 marked 11:24 AM **Petitioner's exhibit #78** marked, offered, and admitted 11:38 AM Petitioner's exhibits #79 and #80 marked 11:45 AM Noon recess.

End Date/Time: 04/27/11 11:45 AM

Judicial Assistant/Clerk ROGER MCLENNAN  
Start Date/Time: 04/27/11 1:46 PM

Court Reporter CHRISTIE JAMESON

**April 27, 2011 01:45 PM** Court reconvenes. Petitioner's exhibits #79, #80, and #81 premarked. This previous sentence should have read petitioner's exhibits #81, #82, and #83 marked.

01:46 PM **Petitioner's exhibit #77** offered and admitted. Mr Downing continues with cross examination of respondent. 01:49 PM **Petitioner's exhibits #79 and #80** offered and admitted 02:06 PM **Petitioner's exhibit #84** marked, offered, and admitted.

02:14 PM **Petitioner's exhibit #85** marked, offered, and admitted. 02:20 PM **Petitioner's exhibit #83** offered and admitted. 02:25 PM Petitioner's exhibits #86 and #87 marked. 02:31 PM Petitioner's exhibit #88 marked 02:34 PM **Petitioner's exhibits**

JUDGE/COMMISSIONER ROSANNE BUCKNER Year 2011

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

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## MINUTES OF PROCEEDING

#86, #87, and #88 offered and admitted.

02:38 PM Redirect examination. 02:40 PM No recross examination. Witness stands down 02:40 PM Recess.

03:00 PM Court reconvenes. Respondent's exhibits #89, #90, and #91 premarked Mr Fisher calls NANCY KASEBURG who is sworn and testifies on direct examination 03:14 PM Respondent's exhibit #89 offered and admitted. 03:16 PM Respondent's exhibit #91 offered and admitted. 03:17 PM Respondent's exhibit #90 offered and admitted. 03:23 PM Cross examination.03:26 PM Petitioner's exhibits #92 and #93 marked. 03:35 PM Petitioner's exhibits #92 and #93 offered and admitted. 03:40 PM Redirect examination. 03:41 PM Recross examination. 03:42 PM Witness stands down and is excused. Respondent rests.REBUTTAL 03:43 PM Mr Downing calls GWENDOLY KAY KASEBURG who is sworn and testifies on direct examination. 03:49 PM Petitioner's exhibit #94 marked, offered, and admitted. 03:56 PM Petitioner's exhibit #19 offered and admitted. 03:58 PM Cross examination 04:01 PM Witness stands down Mr Downing rests rebuttal. No further argument by counsel. 04:02 PM Court adjourns.

End Date/Time: 04/27/11 4:02 PM

Judicial Assistant/Clerk ROGER MCLENNAN  
Start Date/Time: 04/28/11 9:26 AM

Court Reporter CHRISTIE JAMESON

April 28, 2011 09:25 AM FOURTH DAY Court in session. Argument by Mr Downing. 10:36 AM Recess. 10:52 AM Court reconvenes. Argument by Mr Fisher. 11:12 AM JUDGE/COMMISSIONER ROSANNE BUCKNER Year 2011

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

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**MINUTES OF PROCEEDING**

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Rebuttal. 11:15 Court adjourns

End Date/Time: 04/28/11 11:15 AM

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Judicial Assistant/Clerk ROGER MCLENNAN  
Start Date/Time: 04/28/11 2:30 PM

Court Reporter CHRISTIE JAMESON

**April 28, 2011 02:29 PM OFF THE RECORD** Court issues memorandum decision.  
Judicial assistant faxes same to counsel Trial concluded. 02 32 PM Journal entry closed.

End Date/Time: 04/28/11 2:32 PM

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